

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF PENNSYLVANIA

IN RE: :  
: Case No. 23-10763  
:  
STREAM TV NETWORKS, INC. CH: 11 : ADV. No. 23-00057  
:  
Stream Tv Networks, Inc. Vs : Philadelphia, Pennsylvania  
Shadron L Stastney : October 16, 2023  
: 10:32 a.m.  
Motion For Preliminary Injunction :  
Request For Temporary Restraining :  
Order Filed By Alastair Crawford, :  
Delaware And Other Law Firms :  
Representing And Acting In :  
Concert With John Doe(S) And/Or :  
Jane Doe(S), Jane Doe(S), John :  
Doe(S), Asaf Gola, Kevin Gollop, :  
Hawk Investment Holdings Limited, :  
Investment Banks Employed By John :  
Doe(S) And/Or Jane Doe(S), :  
Krzysztof Kabacinski, Arthur :  
Leonard Robert "Bob" Morton, :  
Seecubic B.V., Sls Holdings Vi, :  
Llc, Shadron L Stastney, :  
Seecubic, Inc., Patric Theune :  
Represented By Rafael X. :  
Zahralddin :  
. . . . .

BEFORE THE HONORABLE MAGDELINE D. COLEMAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(By Mr. Colby)

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(By Mr. Kodosky)

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1 | OCTOBER 16, 2023 10:32 A.M.

2 THE COURT: Good morning.

3 MR. CAPONI: Good morning.

4 MR. COLBY: Good morning, Your Honor.

5 THE COURT: Please be seated.

6 All right, Counsel. Before we begin, I think there's  
7 a little housekeeping matters I'd probably like to address. So  
8 let's have the entry of appearance for all of the relevant  
9 parties, starting with first -- turn on the right page -- the  
10 debtors. Whos' here for the debtors?

11 MR. KODOSKY: Good morning, Your Honor. Keith  
12 Kodosky joined by --

13 MR. ZAHRALDDIN: Rafael Zahralddin, Your Honor, and  
14 Beau Strickland (phonetic). That's better than Mr. Kodosky  
15 having to pronounce my last name.

16 THE COURT: Zahralddin?

17 MR. ZAHRALDDIN: See, you've known me a long time.

18 THE COURT: Well, no, I've heard it enough. I was  
19 not good at the beginning either. Okay. Mr. Kodosky, I was  
20 not pronouncing it correctly on the last hearing, so now I had  
21 it.

22 MR. KODOSKY: Thank you, Your Honor.

23 THE COURT: Okay. And who's here for the  
24 Respondents?

25 MR. COLBY: Good morning, Your Honor. Evan Colby and



1 Marley Brumme from Skadden Arps on behalf of SeeCubic, also  
2 joined by Melissa Lao, a legal assistant from our office.

3 THE COURT: Okay. And we have probably for -- I'm  
4 sorry, again Mr. Colby. You represent?

5 MR. COLBY: SeeCubic, Inc. of Delaware.

6 THE COURT: SeeCubic, Inc. of Delaware. Okay. Yes.

7 MS. VASSALO: Good morning, Your Honor. Camilia  
8 McKee Vassalo on behalf of Mr. Stastney.

9 THE COURT: Stastney.

10 MR. WRIGHT: Good morning, Your Honor. Davis Wright  
11 of Robinson and Holt on behalf of SLS Holdings VI, LLC.

12 THE COURT: And, Counsel, could you say that again  
13 because unfortunately I did not hear the first -- your name. I  
14 heard SLS Holdings VI, I think you said.

15 MR. WRIGHT: Yes, Your Honor. Davis, D-A-V-I-S,  
16 Wright, W-R-I-G-H-T.

17 THE COURT: Okay.

18 MR. CAPONI: Good morning, Your Honor. Steven Caponi  
19 from K&L Gates on behalf of Hawk Investments.

20 THE COURT: Anyone else?

21 MR. DEMARCO: Your Honor, Andrew Demarco with Devlin  
22 Law Firm here for Rembrandt.

23 THE COURT: Anyone else? Okay. Before we begin, as  
24 I said, there's a couple of housekeeping matters that I think I  
25 need to deal with.

1 With respect to the debtors, on Saturday evening,  
2 9:30, I think, you filed a 40 page brief. I'm not quite sure  
3 -- this is a TRO -- why you filed that. And again, which now  
4 necessitated the Court, opposing counsel, the Court to expend  
5 time, because I wanted to start at 10:00, but that wasn't going  
6 to happen reviewing a 40 page with voluminous attachments and  
7 which seemed to set forth different -- because we were forced  
8 to do a comparison between the initial TRO that was filed, the  
9 brief that was filed.

10 And they seemed to make different arguments that the  
11 Court now had to figure out how to address those. So I'm not  
12 quite sure. You know, this isn't a situation where we have,  
13 you know, a summary judgment or a motion where, you know, the  
14 Court is expecting briefing. This is a TRO that is supposed to  
15 be an emergency. And so this would not have happened except  
16 that we continued the hearing that apparently the debtor took  
17 the opportunity to file supplemental briefing.

18 My rules typically in an -- overall do not allow for  
19 supplemental without prior Court approval. But all that did  
20 was make things unnecessarily complicated and then delayed the  
21 start of this hearing. And, Counsel, I would tell you if this  
22 is an emergency, I'm not quite sure how filing a 40 page  
23 supplemental brief is going to move the dime in one bit other  
24 than causing additional work for opposing counsel and  
25 additional issues that the Court was not originally -- as,

1 again, when we did a comparison, there seems to be there's  
2 different arguments. We'll have to figure that out during the  
3 course of this hearing today.

4           The second matter that I'm concerned with, apparently  
5 there is an outstanding renewed motion, I think it's called, to  
6 force the parties to comply with the 26(f) requirements, which  
7 of course I went and I reviewed the rules and I'm not quite  
8 sure what the parties' positions are and how they get there.  
9 The rules specifically set forth some deadlines that need to be  
10 adhered to. And 16(b), Rule 26(f) refers to 16(b), which says  
11 that the Court shall issue an order within 60 days of either  
12 the entry of appearance of a party and another deadline, but  
13 for my purposes, it's within 60 days of an entry of appearance  
14 of a party. And unless the Court orders otherwise, the parties  
15 have to comply.

16           I don't understand if the Defendants don't want to  
17 comply with 26(f) how they get to say we're not going to  
18 comply. Absent court order, you have to come and ask me to  
19 extend the deadline. Nobody did that except I got a motion  
20 from the debtors, Plaintiff debtors, saying force them to  
21 comply. I don't know what the issue is between the parties,  
22 and frankly, you guys keep that outside of my courtroom. But I  
23 will tell you I expect everyone to comply with the rules.  
24 26(f) says this is how you do it. There is no motion before  
25 this Court asking to extend the 26(f) deadlines. That is all

1 I'm going to say.

2           There is an outstanding motion to force you to  
3 comply. I suggest at the end of this hearing that you guys get  
4 together and figure it out because you don't want me addressing  
5 it when there has been no request for an extension. And unless  
6 somebody can tell me how it works otherwise, unless I have a  
7 missed understanding of what the rules require, I don't want to  
8 see this stuff. I think it is unnecessary. It's not how I  
9 expect attorneys appearing before me to behave. Follow the  
10 rules. Do not burden the Court with unnecessary issues that I  
11 should not have before me. Again, I am not finding that cause  
12 may not exist to extend the deadlines, but that hasn't been  
13 requested. And until it is, follow the rules.

14           Now, that's the only two things I needed to address  
15 for today. And I think -- I hope -- that I don't have to say  
16 any of this again because I had thought that we'd reach a point  
17 in these proceedings where everybody, for lack of a better  
18 word, was playing nice. Okay?

19           Now, where did we leave off at the last hearing?

20           MR. COLBY: Sorry, Your Honor. If I might, I did  
21 wish to have an opportunity to address the middle of the night  
22 Saturday filing.

23           THE COURT: Uh-huh.

24           MR. COLBY: A minute ago, the Court said we'll have  
25 to work that out over the course of the day, which I

1 appreciate. I don't fully understand how we're going to do  
2 that or what that might mean, but we would submit that this, in  
3 a TRO and an expedited context, where the debtor has already  
4 sat on this issue for an extended period of time before  
5 bringing it to the Court in a purported emergency context and  
6 where during the intervening week we get this, you know, the  
7 day before, the middle of the night before we're going to be  
8 here to continue the hearing, we get a brief that raises new  
9 legal arguments, new factual issues and factual arguments, and  
10 submits 2,000 pages of new exhibits that completely changes the  
11 thrust of the basis for the TRO.

12 That that's just simply too late and shouldn't be  
13 considered as part of today's proceedings, which should be  
14 designed around completing the process of addressing the TRO  
15 motion as it was actually filed and as it was made. For  
16 example, there are arguments in the new brief that relate to  
17 confidential -- supposed confidential information that Mr.  
18 Stastney had access to in 2018. Debtors had an opportunity to  
19 question Mr. Stastney and didn't raise this issue whatsoever.  
20 That's just one example. There's also this new theory of  
21 lender liability.

22 THE COURT: Well, frankly, I'm not quite sure how  
23 that has anything to do with a TRO. You have a lender  
24 liability claim, you go file it. I don't get it.

25 MR. COLBY: I'm comforted to hear the Court say that

1 because we don't think it does either.

2 THE COURT: Well, I'm not -- I'm just saying I don't  
3 understand. They're going to get to tell me how, but just in  
4 reading it. In addition, I also forgot to mention that during  
5 that time period the debtors took the opportunity to also seek  
6 discovery within 48 hours, necessitating the Court, again --  
7 and let me just say because there was another thing I wanted to  
8 say. I don't know how any of you think that we're even going  
9 to get to the briefs that you submitted in connection with the  
10 other hearing because all of our time has now been devoted to  
11 issues, emergencies regarding discovery, a TRO.

12 So I just want you to understand if anybody was  
13 expecting and we were hoping to get that done quickly, this is  
14 not helping. This is not helping at all. And it is what it  
15 is. I'm just telling you I will try my best to get to what I  
16 can get to, but, you know, a lot of the times that we should  
17 have been devoting to try to get to the briefs and all those  
18 other things, we are now devoting to discovery disputes, TROs.  
19 I don't know what to tell you.

20 MR. COLBY: Your Honor, I think that's a fundamental  
21 concern for the secured creditors as well. And, in fact, the  
22 overall conduct of the bankruptcy proceeding so far has  
23 suggested a primary strategy of attempting to avoid dealing  
24 with the substantive issues raised by the bankruptcy filing.  
25 It is a continuation of a pattern that we have seen of

1 attempting to get out from under impending judgments by courts.  
2 It's part of the reason, we submit, why we're here because of  
3 the near conclusion of the 225 action in the court of chancery.

4 It's what we've seen as we got close to the end of  
5 the hearing on the various Hawk motions. There was this motion  
6 to withdraw the reference and effectively move substantial  
7 portions of this dispute to the district court here filed by  
8 the debtor.

9 THE COURT: Has that been ruled on?

10 MR. COLBY: I'm sorry.

11 THE COURT: Has that been ruled on?

12 MR. COLBY: It has not been ruled on. And now we're  
13 seeing it in this Court with the serial raising of new issues  
14 and new motions. And I think to state what the secured  
15 creditors submit is obvious, this all speaks in favor of a  
16 compelling need to put a responsible party in charge of the  
17 debtors in the form of a trustee that will bring some semblance  
18 of order to these proceedings and permit the Court and the  
19 parties to focus on actually getting to the important work of  
20 the bankruptcy filing and of the restructuring, whatever form  
21 that takes, because otherwise the pattern has been repeated  
22 forum shopping, shifting of issues, moving targets for us to  
23 try to advance the ball. And it's making it very, very  
24 difficult to make forward progress here.

25 THE COURT: Uh-huh.

1 MR. COLBY: And the way this has played out suggests  
2 that that's not a byproduct of the strategy. That is the  
3 strategy.

4 THE COURT: Well, Counsel, I'm not going to say  
5 whether it's a strategy or not, and I'm not sure what weight if  
6 any -- I'm not saying I wouldn't -- to the fact that this was  
7 filed when the 225 litigation was in place. Parties often file  
8 bankruptcy when there is litigation when they are in financial  
9 strait. You know, I get you guys have come to this court with  
10 a history that is not a history here. I get it. So my goal is  
11 to have you guys leave that at the door.

12 It doesn't mean that it's completely -- I'm not going  
13 to completely ignore it, but for my purposes, again, I -- and  
14 the debtor will need to tell me this. And when I said we  
15 figure out how we deal with that. Again, we're trying to just  
16 sift through and spend time, you know, a couple of hours that  
17 we are trying to -- you know, did I read this on Saturday  
18 night? No. I don't even get notices that this is filed. You  
19 know, only thing I get notices of is if an appeal is filed or a  
20 new bankruptcy case is filed.

21 I do not get -- and as I have said, I don't go  
22 perusing the dockets looking for information. In this case, we  
23 know come Monday morning, my law clerks and I know we better go  
24 -- and my courtroom deputy, the first question I'll have, did  
25 they file anything. At least the last hearing, I was happy to



1 say that nothing was filed and instead, like, yes, there's a 40  
2 with ha zip drive.

3 So again, you know, that's not how I want this to go.  
4 And then when I said I have to figure out where this -- where  
5 we go with this new filing. Do I even consider it at all? Is  
6 it something that really relates to what was originally before  
7 me or was this just an expansion because we had to continue the  
8 hearing?

9 And the debtors are going to have to tell me that,  
10 which means now instead of starting the hearing at 10:00 with  
11 evidence we're going to spend God knows how much time trying to  
12 sift through all these issues because, again, we have spent two  
13 and a half hours this morning trying to figure out what the  
14 heck this -- the new filings are, which means we didn't start  
15 when I anticipated, and now we can't start because now I have  
16 to issue that. And, you know, the 26(f), you guys are going to  
17 figure that out, so we're not talking about that anymore.  
18 We're only going to talk about this. And I get your point, Mr.  
19 Colby, of what -- because they were mine. Not saying that I  
20 agree, but they were issues that were raised for the Court.

21 MR. COLBY: Yeah.

22 THE COURT: Okay.

23 MR. COLBY: So, I mean, the initial motion barely  
24 devoted any time or space whatsoever to an important element on  
25 a TRO, which is likelihood of success on the merits. It was so

1 bereft of any analysis that on our side it wasn't clear to us  
2 what we were even responding to, what, of the 19 causes of  
3 action in the -- supposed causes of action because some of them  
4 aren't actual causes of action, but of the 19 supposed causes  
5 of action in the adversary proceeding, which one was this TRO  
6 about. It can't really be about all of them, and so we had to  
7 guess. And we pointed out in our brief the absence of any  
8 analysis on that very important element of a TRO.

9           And now, all of the sudden, after all of our  
10 preparation, after a substantial portion of the hearing is  
11 complete, in the middle of the night the weekend before we  
12 resume supposedly to finish up, all of the sudden there's this  
13 new focus on some supposed cause of action, one of which still  
14 isn't actually a cause of action and it should fail on that  
15 basis. But it has created certainly some prejudice. It  
16 certainly speaks to the utter failure of the motion as it was  
17 initially framed to carry the debtor's burden. It is a tacit,  
18 if not express admission, borderline express admission,  
19 whatever, however we want to characterize it, that the basis  
20 for the motion utterly failed after day one.

21           They didn't satisfy the elements of what one needs to  
22 show in order to obtain injunctive relief, temporary injunctive  
23 relief. As a legal matter, it didn't make any arguments about  
24 a particular likelihood of success on the merits on a  
25 particular claim. And secondly, we spent the whole day when we

1 were here a week ago talking about the Phillips license and  
2 sublicenses and all those things. Not at all a component, a  
3 significant component, of this new brief. The issues, the  
4 basis for the TRO has completely changed all of the sudden in a  
5 way that shows the fatal flaws in the initial motion and which  
6 is highly prejudicial for us to proceed on those basis if  
7 that's going to be part of what we're, you know, litigating  
8 here today in the evidence.

9 THE COURT: Well --

10 MR. COLBY: So, I think I made my point.

11 THE COURT: Right. And I will say this, Counsel,  
12 with respect to the issue of success on the merit. I mean,  
13 that's sort of a low threshold. I mean, I've looked at the  
14 case law. It's not very high. But the biggest thing in a TRO  
15 is irreparable harm.

16 MR. COLBY: Sure.

17 THE COURT: And what I've tried to figure out and  
18 I've tried to decipher is what is that standard. Is it a  
19 preponderance of the evidence? Is it some high, you know, more  
20 than likely than not? You know, and so that's sort of what I  
21 was focusing on for these hearings. And now, again, I have  
22 something new and I have to first, one, decide, do we even  
23 address those things.

24 MR. COLBY: Right.

25 THE COURT: And again, it necessitating, and

1 somewhere in my notes I have a comparison of what was in the  
2 original motion as to what is in the new motion. And to be  
3 perfectly honest, my view of TROs, yes, success on the merit.  
4 But if you look at the case laws and the cases out of the Third  
5 Circuit, it's sort of a low threshold.

6 MR. COLBY: Well, Your Honor --

7 THE COURT: It's really irreparable harm.

8 MR. COLBY: We could spend a lot of time talking  
9 about it.

10 THE COURT: But we're not going to talk about that  
11 because --

12 MR. COLBY: Yeah. I was going to say --

13 THE COURT: We're not going to talk about that  
14 because I need to know what I needed. I needed to know what it  
15 is from the Court's perspective, where we needed to go, what  
16 the standard is, what the elements I have, and be in a position  
17 to make a ruling. So I'm just simply saying this is how I  
18 looked at it.

19 MR. COLBY: Understood.

20 THE COURT: And that was it. I get what you're  
21 saying, which is you believe this is a new basis. It wasn't in  
22 the original. You're prejudiced because you weren't prepared  
23 to address that and that wasn't the issue brought to the Court.

24 MR. COLBY: Yeah. And the showing, we could probably  
25 have an interesting discussion of exactly what the --

1 THE COURT: The legal thresholds are?

2 MR. COLBY: The required, the legal threshold is, but  
3 what I think is abundantly clear is that the showing made by  
4 the debtors was, you know, zero or barely above that, and so.

5 THE COURT: But we're not there yet. You're arguing,  
6 you know, you're making closing arguments as to -- but I'm not  
7 there.

8 MR. COLBY: Understood.

9 THE COURT: All I'm trying to address right now is  
10 where as we with the evidentiary record that needs to be made  
11 for this Court to get where I need to get.

12 MR. COLBY: Understood. I think I raised it only  
13 because the failure to make any initial, you know, meaningful  
14 initial argument on success on the merits or the failure to  
15 make a meaningfully factual showing on irreparable harm or the  
16 imminent component of irreparable harm, which I think we  
17 addressed by showing these supposed concerns have been around  
18 for months and months. All of that also speaks to why now all  
19 of a sudden we've got a new TRO effectively on midnight on  
20 Saturday before resuming our hearings.

21 It was -- you know, I know we're not done. I think  
22 we should close out the record on that motion as it was  
23 originally framed. We'll see if the debtors can do any better.  
24 But I think -- you know, I think the fact that we're now trying  
25 to litigate some completely different TRO and have apparently

1 abandoned the way it's initially framed speaks to the fact that  
2 it really, you know, should be denied. So I understand we're  
3 going to finish the process.

4 THE COURT: Right. I'm not sure, you know.

5 MR. COLBY: But --

6 THE COURT: I'm not going to make a decision because,  
7 first of all, I don't have a complete record. I get your  
8 arguments. I'm going to -- you know, I see counsel are all  
9 standing, so I'm not sure if they want to contribute or add to  
10 what you wanted, what you said, and then I'll hear from the  
11 debtor. Let's see how this works.

12 Okay, Mr. Caponi. I see you're walking up to the  
13 podium. What's your position?

14 MR. COLBY: Never turn on --

15 THE COURT: And please -- right.

16 MR. COLBY: Yeah. So, sorry, Your Honor. Just to  
17 conclude the thought so I can sleep better at night. I think  
18 it speaks to the need to not allow the debtors to suddenly turn  
19 today into a proceeding on a motion, effectively what is a new  
20 motion with entirely new basis that was filed in the middle of  
21 the night on Saturday. We haven't had a chance to respond to  
22 it. We've barely had a chance to analyze it. We got 2,000 new  
23 documents, 2,000 pages of new exhibits. I don't think that's  
24 what today should be about. That's all. Thank you, Your  
25 Honor.

1 THE COURT: All right, Mr. Caponi. And I get that  
2 you were going to add to what Mr. Caponi says?

3 MR. CAPONI: Your Honor, I'm not going to add to Mr.  
4 Colby's presentation. I think he said it admirably. I just  
5 want to address one point, which is as Your Honor started out,  
6 the -- and maybe Mr. Colby started out -- the notion, you know,  
7 the debtors filed these cases and they repeatedly say in their  
8 filings we filed the bankruptcy in order to provide the debtor  
9 breathing room.

10 The Court is entitled to breathing room to address  
11 the gating issue as to whether or not a trustee should be  
12 appointed or these cases were properly filed because who runs  
13 these estates if these estates continue to exist is fundamental  
14 to whether these adversary proceedings should be followed,  
15 whether there's a need for a TRO. There's a tremendous amount  
16 of money being spent and --

17 THE COURT: Oh, we commented about how much money is  
18 being racked up in attorney fees. That was one of the first  
19 thing I said. How much is this stuff costing? And from the  
20 Court's perspective, I mean, no offense to the creditors, you  
21 spend what you spend. But from the debtor's perspective, every  
22 dime spent on attorney fees is less money for creditors. So,  
23 from my perspective, I have a concern.

24 MR. CAPONI: And it's shared, Your Honor. And, you  
25 know, once we put the -- the record was closed on the prior

1 motions, our goal was to give the Court breathing room. We  
2 were required to file a motion to extend the time and respond  
3 to the adversary proceedings because the debtors wouldn't agree  
4 to the TRO, the Rule 26(f). I mean, the Court's on the  
5 receiving end is a lot. We're getting on the receiving end  
6 even more. It's like shotgun, you know, making us dance.

7 I'm not making an application, Your Honor, because  
8 there is no such application as -- all I am is encouraging the  
9 Court do the best it can to separate the wheat from the shaft  
10 and focus on the prior motions and ignore the debtor's efforts,  
11 to the extent the Court can within the rules, to distract  
12 because those gating issues, I can't stress enough. They are  
13 gating issues because if a Chapter 11 trustee is appointed of a  
14 7 trustee where these cases are kicked, this TRO, the adversary  
15 proceedings, are all going to be handled, not handled or  
16 handled in a completely different way. So anything that we can  
17 do --

18 THE COURT: Well, we don't know in a different way.  
19 You would hope --

20 MR. CAPONI: Well, I don't know, but it could be.

21 THE COURT: Right. Right.

22 MR. CAPONI: I'm not saying this from my client's  
23 perspective as a secured creditor that advanced those motions,  
24 whatever we can do to give the Court breathing room. I heard  
25 you about the 26(f). Take it to heart. And I would just --



1 again, I'm just pleading my case that we've got to not let the  
2 distractions take us away from the primary motions. That's all  
3 I wanted to add, Your Honor. Thank you.

4 THE COURT: All right. Thank you, Mr. Caponi.

5 Yes, Counsel.

6 MS. VASSALO: Thank you, Your Honor. And I will be  
7 brief because I do understand that we have taken a lot of time  
8 trying to address these preliminary issues when Your Honor is  
9 expecting to hear evidence this morning.

10 THE COURT: Right.

11 MS. VASSALO: We spent a lot of time over a week ago  
12 hearing evidence on one motion that was premised almost  
13 entirely on whether or not SeeCubic could utilize sublicenses  
14 and whether or not that was permissible or whether or not that  
15 was going to result in imminent, irreparable injury to Stream.

16 Now, on Saturday night, I opened a document that all  
17 of a sudden turns on whether or not a 2018 employment agreement  
18 was somehow breached by my client, Mr. Stastney, in 2023, and  
19 that is somehow irreparable, imminent, irreparable injury that,  
20 you know, weighs in favor of a TRO now that was never raised  
21 during that hearing.

22 THE COURT: Well, at least a TRO with respect to your  
23 client.

24 MS. VASSALO: Right.

25 THE COURT: Because this doesn't relate to -- well, I

1 didn't see it and the debtor is going to have to tell me how  
2 that related to these other people, other defendants.

3 MS. VASSALO: But my point is we spent a lot of time  
4 that Friday and not once did that employment agreement come up.  
5 In fact, the employment agreement wasn't even attached to the  
6 adversary complaint. The first time it was presented to this  
7 Court was Friday or Saturday night. And buried among those  
8 additional 2,000 pages is a settlement agreement with my  
9 client, which if you look at the settlement agreement, contains  
10 a waiver of claims which if you examine it will actually  
11 demonstrate to the Court that many of the claims contained in  
12 the adversary complaint are actually barred. So there are  
13 serious legal issues here that I need to have the opportunity  
14 to brief on behalf of my client and not just with 48 hours'  
15 notice.

16 THE COURT: Well, I will --

17 MS. VASSALO: The prejudice here is --

18 THE COURT: All right.

19 MS. VASSALO: -- extraordinary.

20 THE COURT: Well, I will tell you we did not look at  
21 the exhibits. I was not opening a zip drive that was how many  
22 pages. So, to the extent there is a settlement agreement or  
23 whether one was attached or not attached, I wouldn't know.

24 MS. VASSALO: And that's my concern, Your Honor, is  
25 the prejudice to my client if we proceed today on some new form

1 of liability, new form of immediate emergency relief where  
2 frankly, Your Honor, when we stood here at the end of the  
3 hearing on Friday. You said, "Is there anything else?"  
4 Debtors could have said, "You know, we would like to submit  
5 additional briefing." And we likely would have said we don't  
6 want to do that.

7 THE COURT: You would have said no, but.

8 MS. VASSALO: But if we're going to do that, let's at  
9 least have some order because we've all practiced for a long  
10 period of time and we just want to have a little bit more order  
11 to these proceedings, as does Your Honor, right?

12 THE COURT: Well, as I pointed out initially, my  
13 rules, my chamber rules talk about what you can and can't file.  
14 And one of the things that I don't allow is supplemental  
15 briefing without prior notice or approval from the Court simply  
16 because I don't want to have endless filings where this party  
17 files and then there's a response and we never get to where  
18 we're trying to get because there's too many new issues, new  
19 things that come that were not part of the original motion, the  
20 original whatever it is that the Court is addressing.

21 So that -- I would also encourage people to look at  
22 my chamber rules before you file anything. I thought I said  
23 that -- and you weren't here. I thought I said that months  
24 ago, that that was important. But I get your point that this  
25 is highly -- you believe it's highly prejudicial to your

1 client, Mr. Stastney, and that if we're going to proceed today,  
2 that we don't consider any of the things that are not -- other  
3 than what has been previously mentioned in the motion to the  
4 extent it's different, that you believe that that should not be  
5 addressed today. Any evidence regarding that should not come  
6 in.

7 MS. VASSALO: Yes, Your Honor. And to the extent  
8 that the Court is inclined to consider any evidence that's  
9 outside of those motions -- the motion that was filed  
10 originally and heard on, I believe, it's October 6<sup>th</sup> was when we  
11 were first here, I would ask that we would adjourn today's  
12 proceedings and allow me the time to actually respond before.  
13 But I just say that so that you understand the prejudice that I  
14 am feeling at this moment and the feeling of --

15 THE COURT: Right. How do you -- right. And, you  
16 know, this is a TRO. And I'm not quite sure. You know, it's  
17 been a long time since I've done one, but in my prior life, I  
18 did them routinely. And I don't recall them being extended  
19 like this. We go in half a day, maybe a day, done.

20 I don't recall any discovery ever happening because  
21 it's a TRO. So, again, this was many moons, many years ago, so  
22 maybe the practice has changed. Maybe things are different.  
23 But from my recollection, this is unusual from my own  
24 experience. Again, I don't know what, you know, everybody  
25 else's experience. I don't know what people do now. You know,

1 that was 14 years, almost 14 years ago, so things have clearly  
2 changed. So, I get your point and I will consider that --

3 MS. VASSALO: Thank you, Your Honor.

4 THE COURT: -- in figuring out how we proceed.  
5 Counsel.

6 MR. WRIGHT: Good morning, Your Honor. Davis Wright  
7 again on behalf of SLS Holdings VI, Inc. Your Honor, I don't  
8 want to belabor the point, but I have to echo that, the very  
9 last argument. In connection with SLS, we have now been  
10 identified with these lender liability claims in the  
11 supplemental briefing. That was not something in the original  
12 motion. It's not something my client briefed in response to  
13 the original TRO motion.

14 THE COURT: Well, I'm not quite sure how a TRO  
15 relates to that.

16 MR. WRIGHT: Your Honor --

17 THE COURT: I don't know. Debtors are going to tell  
18 me. I don't know.

19 MR. WRIGHT: Your Honor, I understand what you're  
20 saying that debtor is going to tell you. I'm going to suggest,  
21 Your Honor, that even if the debtor somehow makes a suggestion  
22 as to how a legal claim for lender liability requires a TRO,  
23 I'm going to ask Your Honor at the end of today to continue  
24 that so that my client may actually brief that legal argument  
25 and address whatever evidence comes up today that was not

1 available ten days ago.

2 THE COURT: Okay.

3 MR. WRIGHT: Thank you, Your Honor.

4 THE COURT: Okay. Anybody else from this side?

5 All right. Mr. Zahralddin, explain to me.

6 MR. ZAHRALDDIN: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. ZAHRALDDIN: I'm going to try not to denigrate  
9 counsel on the other side in any way because I just sat through  
10 weak arguments, didn't do this. I mean, they did closing  
11 argument and that's, I think, a problem. But let's just talk a  
12 little bit about the case so we can put this into context.

13 We filed this case and then immediately were hit  
14 without any sort of breathing spell because we were hit with a  
15 motion to dismiss. We were hit for motions to displace the  
16 management of the debtor. And this is after having had the  
17 entire company taken away and then supposedly given back to us  
18 about eight months ago. And then the reason that this  
19 bankruptcy filing was filed was not to just avoid a 225 action.  
20 A 225 action is a secured creditor's action. It has nothing to  
21 do with determining whether there's a valid director. It has  
22 to do with whether you can exercise a pledge agreement in a  
23 loan document. So it's no different from any time somebody is  
24 trying to file an action, a secured lender, and the debtor says  
25 I can do better somewhere else.

1 And key to why we can do better here is because we  
2 are going to pay the unsecured creditors in the case and we  
3 will pay the other creditors if they have allowed claims. And  
4 central to everything that's happened in this last few years is  
5 key on the lender liability, which is not a cause of action, as  
6 Mr. Colby said. It is a series of causes of action that focus  
7 on whether or not there's dominion and control over a debtor or  
8 assets of the debtor, in this case.

9 And everyone says, well, why is it that we come up  
10 now? Well, we come up now, Your Honor, because we said this  
11 was happening in the very beginning. We filed a motion to  
12 enforce the stay and said we were going down the pathway of  
13 there trying to be control over these subsidiaries where we  
14 have stock that is an asset of the estate and we also have  
15 obligations.

16 THE COURT: What are the assets? That's something  
17 I've been struggling to figure out.

18 MR. ZAHRALDDIN: Well, Your Honor, it's -- I have --  
19 I ran through it last night just to give myself some  
20 perspective on whether I was completely displaced in time and  
21 space or whether it was actually just the circumstances of this  
22 case. You look through any cash management motion, any DIP  
23 motion, you can pull up 50 to 100 different references to money  
24 flowing through non-debtor subsidiaries, non-debtor foreign  
25 subsidiaries. This is not an uncommon structure. And

1 particularly with a tech company, this is not an uncommon  
2 structure to have a tax group over in Europe.

3 But what's important is that the licenses that are  
4 involved here and the trade secrets, even though they're in  
5 different subsidiaries, there are still obligations of the  
6 debtor that have to be adhered to. If you have trade secrets  
7 and they're sitting in the subsidiary in the Netherlands, they  
8 have to protect those trade secrets. The only reason --

9 THE COURT: They who? Who has to protect the trade  
10 secrets?

11 MR. ZAHRALDDIN: The, well, number one, it would be  
12 the folks in the subsidiary that are managing it. A gentleman  
13 like Mr. Patrick Thune, Mr. Bart Barenthol (phonetic), those  
14 folks who are in the Netherlands. And then now if Mr. Stastney  
15 has been appointed as an interim director, there is a similar  
16 obligation to protect those trade secrets and to adhere to the  
17 licenses, the two things that are probably, I would say top  
18 three that are probably most important to a tech company is the  
19 protection of the trade secrets because they do not stay trade  
20 secrets unless they are protected and kept secret, and number  
21 two, adherence to the license as the licensor believes it is,  
22 not some other interpretation --

23 THE COURT: Well --

24 MR. ZAHRALDDIN: -- which I believe we heard last  
25 Friday during testimony.



1 THE COURT: All right. Well, what I'm trying to  
2 figure out, and I will be perfectly honest. I kept trying to  
3 figure out who owns these license? Are they property? Because  
4 the first time I ever saw the license was just -- I was  
5 surprised. I didn't see them in the numerous days of  
6 litigation with the motions. All I heard was license this,  
7 license that. Well, I still haven't figured out who owns the -  
8 - at least, I'm confused as to who actually owns these  
9 licenses. Debtor says they own them. Somebody else says they  
10 own them.

11 MR. ZAHRALDDIN: Well, the debtor owns, as of today  
12 during the bankruptcy, no 225 action or any other, the debtor  
13 owns those. The debtor is Technovative. The debtor owns  
14 everything. And that's why we -- we haven't had our breathing  
15 spell, Your Honor, because it's been extended --

16 THE COURT: Wait a minute. So when I look at -- and  
17 I briefly looked at the licenses and the -- well, I looked at  
18 the Phillips license. I'm a little confused. I mean, there's  
19 patents. I heard references to patents. I still don't know  
20 who owns this stuff.

21 MR. ZAHRALDDIN: The license is licensed out by  
22 Phillips. We also had new information that came in that  
23 Phillips is making no more licenses.

24 THE COURT: I get all that, but that still --

25 MR. ZAHRALDDIN: Yeah.

1 THE COURT: -- doesn't answer the question for me.

2 MR. ZAHRALDDIN: Well, the license itself says that  
3 it's owned by the subsidiary and it's -- and the use of it is  
4 all of its affiliates, of which Stream TV and Technovative are  
5 affiliates. It was written that way so that this subsidiary  
6 structure, this tax group, some of which had R&D, most of the  
7 production capability is here in the United States with Stream,  
8 but that way it all worked out and it was done for business  
9 purposes. There were tax reasons at one point which have no  
10 become obsolete, but that's the way the business was set up.  
11 And it does clearly say that affiliates are there.

12 But the trade secrets are on loan. They are being  
13 used by the R&D. They are owned by Stream. And that's why  
14 Stream has to protect them. They have to make sure they're not  
15 exposed to other people, whether it's through another business  
16 model or whether it's just through negligence or inadvertence,  
17 but right now, what we have heard is that it's through a  
18 business model, one which is unacceptable and contrary to the  
19 license itself, the license, which is irreplaceable and also  
20 will lead to irreparable harm if it's damaged.

21 THE COURT: Okay.

22 MR. ZAHRALDDIN: And, Your Honor, look, we know that  
23 you were ill. Mr. Rajan was ill. It's not as if we didn't say  
24 this is happening. We had a quite protracted and long and  
25 lengthy trial over the motions that were filed. And I wish we

1 didn't have to do any of those because they did take away money  
2 from the estate, but the debtor has to defend itself. And if  
3 there are gating issues that cost the estate something, then we  
4 have to defend ourselves.

5 THE COURT: Okay.

6 MR. ZAHRALDDIN: And we have put up -- and I will let  
7 Mr. Kodosky explain where he's going to go with the evidence,  
8 but I had to rise and tell you that aside from finding out  
9 there are not going to be any more licenses, aside from finding  
10 out who the license, the only other license went to or the  
11 portfolio went to, which were key pieces of information that  
12 came in, Mr. Stastney was made an interim director. And he  
13 said he's going to be -- and if you read the protocol -- he's  
14 going to be vetoing any R&D work that we need done. He's going  
15 to continue to hold on to assets that the subsidiary said that  
16 they're refusing to give to us until you rule because of what  
17 happened in the Amsterdam court. And most troubling, Your  
18 Honor --

19 THE COURT: Wait a minute. Wait a minute.

20 MR. ZAHRALDDIN: Okay. Sure.

21 THE COURT: Wait a minute. I'm a little -- I mean,  
22 there's so many layers to what you're saying. You know, you're  
23 saying that Mr. -- and I don't -- and this is colloquy because  
24 --

25 MR. ZAHRALDDIN: I understand, Your Honor.

1 THE COURT: -- that Mr. Stastney is going to veto any  
2 research that's related to Stream, correct?

3 MR. ZAHRALDDIN: Yes. And that was what was  
4 happening with the prior independent director. And Mr.  
5 Stastney has indicated that he's a competitor and let the best  
6 company win. That's his position. And that's who is our  
7 interim director now looking over our trade secrets and  
8 managing our --

9 THE COURT: So I'm a little confused.

10 MR. ZAHRALDDIN: Okay.

11 THE COURT: The Dutch court, the court in the  
12 Netherlands, has appointed Mr. Stastney and presumably he has  
13 some independent obligations. He has all these other things  
14 that he has to adhere to because he's supposed to be -- I'm  
15 sure the Court is expecting him to be a neutral party.

16 MR. ZAHRALDDIN: I don't --

17 THE COURT: They appointed him.

18 MR. ZAHRALDDIN: I'll tell you why. I'll tell you  
19 why in a second, please.

20 THE COURT: Well, I don't -- I mean, I'm trying --  
21 there's, again, these conflicts between, you know, I'm assuming  
22 Mr. Stastney has rules and regulations that are guiding his  
23 position as the independent director.

24 MR. ZAHRALDDIN: He does.

25 THE COURT: For whatever reason that court decided he

1 was independent has nothing to do with me.

2 MR. ZAHRALDDIN: He's not independent, Your Honor.  
3 He's the interim director until such time as a court -- also  
4 including you -- gives an indication of where we should go on  
5 this.

6 THE COURT: So somehow I'm supposed to tell SeeCubic  
7 B.V. over there in the Netherlands how they're supposed to  
8 proceed?

9 MR. ZAHRALDDIN: They are waiting to see if the  
10 automatic stay will be enforced. And the automatic stay,  
11 according to Congress, is extraterritorial. It is not -- Your  
12 Honor, it does not say -- it says in any other court, so it is  
13 clear to us that you do have that power. And again, the stay  
14 is extraterritorial and we've been asking for enforcement of  
15 it, which was put into abeyance, and now it's come to a head.  
16 This is a very crucial point.

17 THE COURT: Wait a minute. And there's been so many  
18 filings in this Court. You're telling me that you actually  
19 filed -- and I'm not saying you didn't because the focus has  
20 been on the motion to dismiss, the motion for a trustee, the  
21 motion to convert. All of those things have been to the  
22 forefront of this matter and whether the parties get to go back  
23 to the chancery court and all of those other issues. I don't  
24 recall -- and maybe you did, maybe you didn't -- addressing the  
25 issue of imposing the stay on the subsidiary.

1 MR. ZAHRALDDIN: Yes, ma'am. It was a motion to ask  
2 for a -- you usually get it as a comfort order so you can give  
3 it to a foreign court. And we did say that it was an emergency  
4 motion to enforce the stay. Mr. Maza (phonetic), you know,  
5 directly told you that nothing was happening, that there's no  
6 reason for this, that they were never going to move on the  
7 assets in the subsidiaries. And here we sit today and Mr.  
8 Stastney is now the interim director.

9 THE COURT: But again, I get that Mr. Stastney may be  
10 the interim -- I'm going to call him independent because that's  
11 what he's supposed to be.

12 MR. ZAHRALDDIN: That's not what the order says, Your  
13 Honor. It says interim.

14 THE COURT: Well, I haven't seen the order. I mean,  
15 I don't know. I mean, that's the whole point. There's no  
16 transcript. There's none of the -- what am I supposed to do?  
17 Just sort of --

18 MR. ZAHRALDDIN: Oh, I think we may have. I'll have  
19 to double check.

20 THE COURT: Well, I understood from --

21 MR. ZAHRALDDIN: We can introduce the order from  
22 Amsterdam, Your Honor.

23 THE COURT: Okay.

24 MR. ZAHRALDDIN: And it's got the protocols attached  
25 to it. And they give wide latitude, which is what concerns us.

1 THE COURT: Okay. But why aren't you in Dutch court  
2 telling them you need to reign Mister -- make sure that Mr.  
3 Stastney complies?

4 MR. ZAHRALDDIN: Because they're looking to the  
5 United States to give them guidance, Your Honor.

6 THE COURT: Oh, so they're looking to me for  
7 guidance? Oh, okay.

8 MR. ZAHRALDDIN: Yes, ma'am.

9 THE COURT: All right. All right. And again, I  
10 understood there was no transcript of what occurred at that  
11 hearing.

12 MR. ZAHRALDDIN: There's no transcript of the  
13 hearing, but there is the order afterwards and there are the  
14 reference to the protocols and the protocols were also put into  
15 evidence, if I'm not mistaken.

16 THE COURT: Okay. Hold on. Do we know what exhibit  
17 number that is?

18 UNIDENTIFIED SPEAKER: 24.

19 MR. ZAHRALDDIN: 24.

20 UNIDENTIFIED SPEAKER: 3 and 4.

21 THE COURT: Okay. But right.

22 UNIDENTIFIED SPEAKER: I see 3 and 4. They were  
23 introduced last time.

24 THE COURT: So we're going kind of afore right now.  
25 You know, we're talking. This is more almost like closing

1 arguments. I don't want to go there. I want to know for  
2 today's purposes respond to the argument that this last minute  
3 filing -- because that's what it was -- is somehow different  
4 than what was originally before the Court and that this  
5 basically is a new motion with new grounds because, again,  
6 Counsel. Maybe you can tell me because, again, I know what I  
7 read, but as I always say, what I read and what people intend  
8 or what -- may not be what is necessarily the --

9 MR. ZAHRALDDIN: Your Honor, I apologize, but I  
10 believe in looking through it, it is simply an amendment to the  
11 original motion. It is an amendment because we were able to  
12 review the transcript from Mr. Stastney's testimony. We also  
13 were able to get more information from Phillips. And most  
14 alarmingly, we then were reviewing things and we found that  
15 four -- was it four of our employees in the Netherlands?

16 UNIDENTIFIED SPEAKER: Yeah.

17 MR. ZAHRALDDIN: Four of our employees in the  
18 Netherlands are now listed on the website for SeeCubic of  
19 Delaware as part of their team -- four. The head of  
20 technology, head of finance. Several people are now listed as  
21 part of SeeCubic's team. How is it that somehow our  
22 subsidiaries employees and the head of technology is now  
23 employed by and part of the team at SeeCubic of Delaware? I  
24 feel like Cassandra in a sense, Your Honor. The sky is  
25 falling. It may have already fallen if these secrets get out.



1 And that's our concern and that's the reason this is an  
2 emergency.

3 THE COURT: Well, I get that, but what I'm trying to  
4 figure out is that your -- a lot of what it's now Mr. Stastney  
5 has trade secrets and you want to stop him from using them.  
6 And we need a TRO. I get the argument against Mr. Stastney. I  
7 get the argument against SeeCubic Delaware. I don't get it  
8 against these other people because I'm not quite sure how they  
9 relate. But my concern is is this just an amendment or is this  
10 new grounds?

11 MR. ZAHRALDDIN: We --

12 THE COURT: Of course, their position is new grounds.  
13 Again, I looked at the original, sort of said, okay. You know,  
14 what is -- how does that relate? And I'm asking you to tell me  
15 because now we have, you know, a lot of what may, in fact, be  
16 closing arguments that you've now put into this supplemental.  
17 I'm not quite sure how -- I mean, I guess part of it is I'm  
18 trying to make sure that when we do this evidentiary record  
19 that it remains within some framework. And is that what you  
20 filed on Saturday within that framework or is something  
21 different? You're saying it's not different. We just  
22 expanded. They're saying, no, this is different because at no  
23 time did you reference Mr. Stastney. I don't know what you  
24 said about Stastney without -- again, we were trying to do as  
25 deep a dive as we could within the time period that we had.

1 MR. ZAHRALDDIN: Your Honor, it boils down to this.  
2 Mr. Stastney and Hawk and SLS and SeeCubic and Mr. Stastney are  
3 all related. They have contracts which tie them together as  
4 secured creditors. They have not denied that. They have filed  
5 essentially duplicative proofs of claim with one exception and  
6 being SeeCubic is now saying that Stream TV owes them \$37  
7 million because they've been paying for this subsidiary, which  
8 again argues for the fact that why are we going to be paying  
9 \$37 million of estate money if this isn't our subsidiary? I  
10 mean, the whole thing has such a circular argument to it. But  
11 it can all be boiled down to this. They took our company.  
12 They then held it.

13 THE COURT: They who?

14 MR. ZAHRALDDIN: Well, it was Hawk who was part of  
15 the omnibus agreement, Alister Crawford, SLS, and then Mr.  
16 Stastney may have not been in his personal capacity, but he  
17 certainly received -- he received remuneration out of that  
18 contract as well as being the CEO of SeeCubic and a former CFO  
19 and vice-chair of the board of Stream.

20 So they all put together this omnibus agreement.  
21 They took over the company. They took positions in this new  
22 company, SeeCubic of Delaware, which by the way, we have the  
23 trademark on SeeCubic because of the issues of SeeCubic of the  
24 Netherlands having had it first and I think we're also  
25 registered otherwise. But let's get to that by --

1 THE COURT: Who's we? We who?

2 MR. ZAHRALDDIN: Stream.

3 THE COURT: Stream has -- who has the trademark for  
4 the name?

5 MR. ZAHRALDDIN: Stream owns the name, SeeCubic, we  
6 believe, and we're in the middle of trying to run that down  
7 too. But the fact is they took the company and then they  
8 didn't give it back to us and certainly not in one piece. And  
9 so all of this is a product of them not returning everything.  
10 They've had novel arguments which have been pushed aside about  
11 how they improved the technology. In other words, they seem to  
12 think that they have already won all these things. We have  
13 heard that from them before.

14 They're treating this -- and that's the problem and  
15 that's the focus of the lender liability. They're treating it  
16 as if they already have the debtor. And they're going every  
17 which way they can. They're utilizing self-help. They're  
18 going behind everyone's back here by going to the Netherlands  
19 and getting the subsidiary. This is what they've been doing  
20 since the very beginning. And only the Stellar (phonetic)  
21 Supreme Court was able to say guys, you didn't do this the  
22 right way. And they vacated the prior orders.

23 THE COURT: I get that, but how does that in any way  
24 help me with -- I get everybody wants to argue their closing  
25 arguments.

1 MR. ZAHRALDDIN: I know, Your Honor.

2 THE COURT: I get it. That is not going to move the  
3 dime one bit for me. What I need to figure out is in  
4 connection with today's hearing, what kind of evidence I will  
5 allow or should be introduced into the record to allow this  
6 court to decide whether a TRO is appropriate. What I have  
7 heard from the opposing parties is that what they were prepared  
8 to defend is different than what was in the amendment. And  
9 therefore, I should do one of two things. I should either  
10 limit the evidence to support the specific claims that were in  
11 the original not amended TRO or if I allow evidence on the  
12 amended TRO that I keep the record open so that they are  
13 allowed to defend against what they are asserting are new  
14 claims.

15 So tell me how these in your calling supplemental,  
16 but referring to it as amended. This is supplemental brief,  
17 but how does that relate to the original motion that would have  
18 put the parties on notice? Because they have to be placed on  
19 notice as to what it is the claims are and what they are  
20 expected to respond to. How? I have to do one of two things.  
21 I either have to say, no, a supplement is a supplement. It  
22 wasn't what you originally moved on. I'm not hearing it. Or  
23 it's an amendment that is inclusive or expansion of what you  
24 originally pled, and therefore, the other parties get an  
25 opportunity to defend. Tell me which one. You believe it's an

1 amendment. Why is it an amendment as opposed to a new basis  
2 for the relief being sought?

3 MR. ZAHRALDDIN: Well, Your Honor, the adversary,  
4 underlying adversary complaint is pretty all-encompassing  
5 because lender liability is pretty all-encompassing. It can be  
6 tortious, it can be contractual, et cetera. But at the end of  
7 the day, the question, the reason that the lender liability  
8 cases were put into place is because there is a question or  
9 some confusions, Your Honor, as to Mr. Stastney, his duty,  
10 whether he's independent, whether he is just an interim, what  
11 controls him. And those were brought up.

12 We introduced the protocol as well as the order on  
13 Friday. And it appeared that there is some confusion as to  
14 what or how he's going to handle this. We do not believe there  
15 is any way, shape, or form that he is going to be unbiased. He  
16 has a company which is trying to use the same technology as us.  
17 Whether he uses that technology or whether he stops us from  
18 using the technology, it's the same thing. He's the definition  
19 of biased when it comes to that.

20 THE COURT: Well --

21 MR. ZAHRALDDIN: And I don't believe that anything  
22 that we're going to be introducing, a lot of that will go to  
23 that issue, to explain and clarify that issue. Secondly, we do  
24 have some cases in there, Your Honor, that are directly on  
25 point from the Western District and I believe the Eastern

1 District.

2 THE COURT: Well, let's back up.

3 MR. ZAHRALDDIN: Yes.

4 THE COURT: This lender, what exactly a TRO is going  
5 to do with a lender liability? I'm going to issue a TRO saying  
6 what?

7 MR. ZAHRALDDIN: No. No.

8 THE COURT: Because lender -- I'm not understanding  
9 that.

10 MR. ZAHRALDDIN: Your Honor, when there's dominion  
11 and control over a lender or a lender's business, right, then  
12 there is a heightened standard -- it's a fiduciary standard  
13 that's put into place.

14 THE COURT: Okay.

15 MR. ZAHRALDDIN: It doesn't eliminate the regular  
16 standard that you just -- you know, you can't commit torts and  
17 breach contracts. But if you're going to be a lender and start  
18 exercising that kind of control, then there has to be a higher  
19 fiduciary standard because you are there to make sure that you  
20 don't get benefitted from the technology in this case, but that  
21 the debtor and its creditors, all the other unsecureds, are not  
22 impeded, so.

23 THE COURT: So what would you envision a TRO saying  
24 with respect to the lenders?

25 MR. ZAHRALDDIN: I would envision, as we put in our

1 revised order, Your Honor, that we would ask for a separate  
2 independent director be put into place perhaps --

3 THE COURT: That I would appoint?

4 MR. ZAHRALDDIN: Perhaps like Judge Carey or someone  
5 else and let them -- someone who's a judge here who we know the  
6 parties will respect and allow them --

7 THE COURT: So you don't respect the court in the  
8 Netherlands?

9 MR. ZAHRALDDIN: Well, no, Your Honor.

10 THE COURT: I don't see --

11 MR. ZAHRALDDIN: The Court in the Netherlands has a  
12 limited scope as to what they wish to do and they have  
13 indicated they're waiting for the U.S. court. So no disrespect  
14 to the court in the Netherlands, but that's what they have  
15 basically said. They've done it the last two times and they  
16 were hopeful that there would be some sort of resolution, but I  
17 don't believe -- they've been looking for guidance from the  
18 Court here.

19 THE COURT: Okay. And you believe that I need to --  
20 because Mr. Stastney is now in charge, he's biased, for lack of  
21 a better word, and that this court needs to do something to  
22 protect the assets of the debtors because you believe Mr.  
23 Stastney and SeeCubic Delaware because he is, from my  
24 understanding, and my recollection of some of these facts are  
25 -- you know, it's been some time, I mean, even from the hearing

1 on the 6th I have some dates a little confused -- that he does.  
2 He has some role. I can't recall what it is, but he has some  
3 role in SeeCubic Delaware.

4 MR. ZAHRALDDIN: He's the CEO, Your Honor.

5 THE COURT: Okay.

6 MR. ZAHRALDDIN: Unless I'm mistaken.

7 THE COURT: That he does have some position and that  
8 SeeCubic Delaware is adverse to the debtor, for lack of a  
9 better word. And if I recall, SeeCubic Delaware, is that a  
10 combination of Hawk and SLS or it's some --

11 MR. ZAHRALDDIN: Well, they have interests in there,  
12 Your Honor, and that's one of the things we need some discovery  
13 on, but SeeCubic of --

14 THE COURT: Well, that has nothing to do with this  
15 TRO.

16 MR. ZAHRALDDIN: Right. Right. But SeeCubic --  
17 well, we're just not sure from the proofs of claim and from  
18 what we've seen. But SeeCubic of Delaware only existed to take  
19 the assets of Stream after the -- it didn't exist beforehand.

20 THE COURT: I know. It was formed --

21 MR. ZAHRALDDIN: Yeah.

22 THE COURT: -- after the omnibus and then, you know,  
23 if I recall from Mr. Stastney's testimony on the 6th, that  
24 they're not doing certain things. They're only doing this. I  
25 can't recall off the top of my head, but they're not selling



1 anything. They're kind of just I guess working with SeeCubic  
2 in B.V., in the Netherlands. But what I -- for my purposes, I  
3 need to figure out exactly what it is. I get you want a TRO.

4 MR. ZAHRALDDIN: Uh-huh.

5 THE COURT: But what the basis for that is, whether  
6 those basis have been pled properly and the parties have been  
7 given notice and an opportunity to defend, and whether you meet  
8 -- you know, I've already said I've looked at the cases. I  
9 know what, you know, at least what I believe is the appropriate  
10 stand, and then what really, really, really is the most  
11 typically the driving force is, you know, harm. I mean, that's  
12 what a TRO is supposed to do. It's supposed to sort of put a  
13 standstill so that the status quo remains and that the party  
14 who is allegedly doing certain action may cause irreparable  
15 harm. That's what this is all about.

16 MR. ZAHRALDDIN: Yes, Your Honor.

17 THE COURT: And instead, what I'm getting is, you  
18 know, this person did this. This person said that. And, you  
19 know, this person's a bad person. This person has bad motives.  
20 Let's keep that all outside.

21 MR. ZAHRALDDIN: Your Honor, that's not what I'm  
22 trying to do. We --

23 THE COURT: I'm not --

24 MR. ZAHRALDDIN: Yeah.

25 THE COURT: I'm simply saying because you started off

1 with that I'm not going to impugn, disparage, whatever the word  
2 is that you used, and when somebody starts off with that,  
3 they're about to do exactly what they said they're not going  
4 to --

5 MR. ZAHRALDDIN: But I actually -- but I actually  
6 kept my word.

7 THE COURT: You kept --

8 MR. ZAHRALDDIN: I kept my word.

9 THE COURT: Yes, you did with respect to the  
10 attorneys anyway.

11 MR. ZAHRALDDIN: Yeah.

12 THE COURT: Not with respect to Mr. Stastney.

13 MR. ZAHRALDDIN: Oh, no, no. Mr. Stastney is running  
14 his business trying to pursue his commercial interest. The  
15 issue is that's in conflict with paying off the creditors in  
16 this case and the debtors. And we're in a bankruptcy and  
17 that's all I'm asking.

18 THE COURT: And so what I am trying to -- and I'd  
19 hoped the parties had focused on without all of this extraneous  
20 he said, she said, they're bad, they're good, all of this.  
21 There is clearly animosity between not the attorneys -- and,  
22 you know, sometimes attorneys take things too personal and I  
23 try to impose that they need to step back because, you know,  
24 sometimes they get righteous indignation that, you know, the  
25 other party is just terrible. And everybody sort of comes to

1 the table and I hope people become a little dispassionate and  
2 say, okay, what are the real issues here?

3 I get the clients are going to be added. That's just  
4 because otherwise we wouldn't be here. They would have worked  
5 something out and we'd have a resolution. That does not exist.  
6 So what I had said, and I said from the very beginning, keep  
7 this -- keep your personal feelings out, attorneys. Bring to  
8 the Court the issues. Let me see them in an orderly fashion.  
9 Do them appropriately and properly. And I will do my best to  
10 make what I think is the appropriate decision.

11 Now, people might not agree, but I'm going to do my  
12 best to make sure my decision is well reasoned and based on the  
13 law. I try very much to be dispassionate, but I know you guys  
14 have seen me when I was angry, that I was a bit not  
15 dispassionate. But, again, back to the germane issue here is  
16 what exactly is it that you have put before the Court as the  
17 basis for the relief that you're seeking and what you filed on  
18 Saturday, did it go beyond that? Is it something new? And if  
19 it's something new, I'm clearly not going to allow testimony or  
20 evidence with respect to that, or is it an expansion because  
21 people often file motions and they're bare bone, and you say  
22 this is just the meat that were putting on the bones. Is that  
23 what this is or is this, you know, something different? And  
24 what I'm hearing from opposing parties is it's different. It's  
25 not meat on the bones.

1 MR. ZAHRALDDIN: For example, Your Honor, counsel for  
2 Mr. Stastney stood up and was asking why is this employment  
3 agreement that they believe has a release in it, why is it  
4 appropriate. Well, it is appropriate because while it does  
5 release certain things, and while there is a limitation on the  
6 noncompete, and while there may be some arguments that that  
7 should be extended because he was certainly competing during  
8 the time he held the company, aside from that, there is a  
9 requirement to keep confidential all the -- and that survives  
10 out there infinitum.

11 THE COURT: I get that point, but that's not the --  
12 it's -- more focused point is was that the basis for your  
13 request for relief, and are you now asserting a different basis  
14 or are you just adding me to the original?

15 MR. ZAHRALDDIN: We're adding meet to the original  
16 concern about who's going to be, and I think -- I've read the  
17 transcript -- who's going to be in the henhouse watching eggs  
18 and the hens, right, and what motivations do they have. Or  
19 quite honestly, what restrictions do they have as it seems to  
20 me Mr. Stastney's lawyer argued that he doesn't have any --  
21 they're all gone, right? So we just wanted to make sure that  
22 it was before the Court that there are some things out there,  
23 and we're trying to get to a solution. That's one of the  
24 reasons that we asked for perhaps there being appointed an  
25 independent director here, which can be done because --

1 THE COURT: Well, wait, is that in the TRO or is this  
2 something you're now bringing?

3 MR. ZAHRALDDIN: It's in the revised order that we  
4 put in, Your Honor, yes.

5 THE COURT: Okay, which I clearly did not look at  
6 because again, we're just trying to wade through the --

7 MR. ZAHRALDDIN: I understand, Your Honor.

8 THE COURT: -- thousands of pages.

9 MR. ZAHRALDDIN: We also wanted to make sure that  
10 since you -- that you had the benefit of some of the research  
11 that we had found, particularly dealing with trade secrets and  
12 the ones that were here.

13 THE COURT: I get that, Counsel, but I'm trying to  
14 figure out where the original motion the issue was trade  
15 secrets. I may have missed it. Again, I've read so many  
16 different pleadings.

17 MR. ZAHRALDDIN: Well, Your Honor, it's in the  
18 original motion.

19 THE COURT: Okay. So if it's in the original motion  
20 that you are alleging that they would were using trade secrets  
21 -- and I think I may recall that, but I don't think --

22 MR. ZAHRALDDIN: They're taking the trade secrets,  
23 Your Honor, and showing them to customers -- not our customers  
24 -- allegedly SeeCubic of the Netherlands' customers. But then  
25 we find a website where SeeCubic of Netherlands and Delaware

1 seem to be the same entity or have the same team. All of that  
2 sells off a million alarm bells for us.

3 THE COURT: Okay. All right. So you believe that  
4 this evidence that you want to bring in with respect to the  
5 trade secrets, it was something that you had alleged in the  
6 motion and that you want to submit in support of that.

7 MR. ZAHRALDDIN: Yes, ma'am.

8 THE COURT: And what I'm hearing from opposing party  
9 is -- well, you didn't mention specifically Mr. Stastney's I  
10 guess, agreements, settlement agreements. That's all new, and  
11 therefore because you didn't put it in the original motion, it  
12 shouldn't be allowed to come in now.

13 MR. ZAHRALDDIN: That is their argument. Our  
14 argument would be that it does go towards how Mr. Stastney is  
15 going to act here, what rules are going to be governed, and  
16 whether he is going to follow them or whether he's going to  
17 continue to pursue his own business interests.

18 And again, if he's pursuing his own business  
19 interests in a vacuum, there's nothing illegal or in tort about  
20 that. But if he's being put in the position as an interim  
21 director of the debtor's asset, we have serious concerns about  
22 that, particularly since he said he's out there marketing. If  
23 you go to the marketing materials and what they do there --

24 THE COURT: Which I would never do but go ahead.

25 MR. ZAHRALDDIN: Oh, no, but they're in evidence. We

1 have private placement memorandum that we put into evidence.

2 THE COURT: Well, I saw the -- but that was pretty,  
3 if I recall Mr. Stastney's testimony, that that was an old  
4 private placement, and he wasn't using that anymore.

5 MR. ZAHRALDDIN: Well, there was another one that was  
6 dated starting October the 1st that we put into evidence, Your  
7 Honor. So --

8 THE COURT: Okay.

9 MR. ZAHRALDDIN: -- those, of course, it's been  
10 consistent over the entire time and also right now.

11 THE COURT: Okay. So --

12 MR. ZAHRALDDIN: It was beginning October 1.

13 THE COURT: So this is where we are. A hearing that  
14 was supposed to start at 10 -- it's almost 12:00. And I to  
15 figure out before everybody rises where I'm at is I have to  
16 figure out whether I'm going to allow evidence, which was the  
17 Debtor saying it's just meat on the bones, and the opponents  
18 are saying, no, this is something new -- this was not what you  
19 pled in your original motion. It wasn't what was contemplated,  
20 and it wasn't what the parties were prepared to defend against,  
21 which means I have to figure that out first.

22 MR. ZAHRALDDIN: And Your Honor, I will say that had  
23 the district court not put this up on the docket when we --

24 THE COURT: Put what up on a docket?

25 MR. ZAHRALDDIN: -- filed up there. We filed it

1 there because we weren't sure if this was -- if it related to  
2 normal proceedings going forward. So the district court said,  
3 no, send it back down. You have to hear it in front of Judge  
4 Coleman, so we refiled it in front of you.

5 THE COURT: Well --

6 MR. ZAHRALDDIN: But --

7 THE COURT: -- I have a different view as to where it  
8 should have been filed originally, but it is what it is.

9 MR. ZAHRALDDIN: Your Honor, that's what we were told  
10 to do. So with a TRO, as Your Honor knows, they are ex parte  
11 sometimes. And in a --

12 THE COURT: Oh, I know, but you didn't ask for ex  
13 parte relief.

14 MR. ZAHRALDDIN: Well, we didn't get a chance to  
15 because we filed it in the district court and --

16 THE COURT: Did you ask for ex parte relief there?

17 MR. ZAHRALDDIN: We spoke to the clerk's office about  
18 that, yes, Your Honor. I think --

19 THE COURT: Which clerk? Not my clerk.

20 MR. ZAHRALDDIN: Not your clerk -- not your clerk.

21 THE COURT: No, no.

22 MR. ZAHRALDDIN: No, not your clerk.

23 THE COURT: Yeah, I know, I heard. I knew -- I mean,  
24 I didn't see --

25 MR. ZAHRALDDIN: Yeah.



1 THE COURT: -- the filing, but I heard all about it  
2 because -- I heard about it. And I was not surprised to see  
3 that it was coming, you know, I'm, like, I'm not involved, but  
4 I knew it was coming --

5 MR. ZAHRALDDIN: Yeah.

6 THE COURT: -- because it is what it is. It's -- it  
7 is what it is. I don't know what the Court's going to do with  
8 the reference to the extent the matters involved court  
9 proceedings. You know, typically in my experience, district  
10 court is not withdrawing the reference.

11 MR. ZAHRALDDIN: Right.

12 THE COURT: They just don't. And this court, with  
13 respect to non-core matters, functions almost like a  
14 magistrate.

15 MR. ZAHRALDDIN: Exactly. Exactly, Your Honor.

16 THE COURT: We make report and recommendation and  
17 then, here you go.

18 MR. ZAHRALDDIN: Right and exactly.

19 THE COURT: You do whatever you want with it.

20 MR. ZAHRALDDIN: And if there's a jury trial, because  
21 if I'm not mistaken, you guys haven't been trained in doing  
22 jury trials, and so that goes up.

23 THE COURT: That doesn't mean anything. We've had  
24 jury trials here.

25 MR. ZAHRALDDIN: Okay, well, that's fine.

1 THE COURT: Let me just say --

2 MR. ZAHRALDDIN: Yeah.

3 THE COURT: Not that I want a jury trial, not that  
4 I'm telling anybody to ask me to do a jury trial. If I have  
5 to, I'll figure it out.

6 MR. ZAHRALDDIN: Right.

7 THE COURT: But typically, core matters remain here.

8 MR. ZAHRALDDIN: Right.

9 THE COURT: I decide them. I, as the bankruptcy  
10 court. And then, so what I'm saying is that while all this is  
11 in a motion to withdraw the reference, until the reference is  
12 withdrawn, we're going forward.

13 MR. ZAHRALDDIN: Right.

14 THE COURT: So --

15 MR. ZAHRALDDIN: And Your Honor, I understand that.  
16 I wasn't forum shopping when we suggested go up there. We  
17 needed to sort out the core and non-core issues, and that's the  
18 way you do it.

19 THE COURT: Right. And if it's core, non-core, and  
20 it's a combo, typically the court will say, Judge, you rule on  
21 what you can and give me a report and recommendation, and I'll  
22 figure it out. And I love when I give report and  
23 recommendations because then I'm done. I'm done, and it's  
24 gone.

25 But this is a little more complicated than my typical

1 I'm withdrawing the reference because somebody's brought a  
2 matter that, for instance, it's a fraudulent transfer claim  
3 under the state law is not necessarily a core matter, and you  
4 may have a preference which is a core matter, and you have all  
5 those different things, and I'll take it, or they'll tell me to  
6 basically function as a magistrate, send it to me, and I'll  
7 figure it out.

8 MR. ZAHRALDDIN: Right.

9 THE COURT: So but that -- we're going a little  
10 astray. What I need to figure out is what am I allowing today,  
11 and I've seen counsel for Mr. Stastney stand up a couple of  
12 times.

13 And you want to respond briefly when he's done?

14 MR. ZAHRALDDIN: I concede. I concede.

15 THE COURT: All right. Yes, Counsel?

16 UNIDENTIFIED SPEAKER: No --

17 THE COURT: No, that's okay.

18 MS. VASSALO: Just briefly, Your Honor. While I  
19 appreciate opposing counsel's representation that this is  
20 merely meat on the bones, I would contend that this amendment  
21 is a new matter because if it weren't a new matter, right, if  
22 it were just meat on the bones, why is the first time that the  
23 Court's seeing the employment agreement in the middle of the  
24 night over the weekend?

25 Opposing counsel also said that the confidentiality

1 provision survives out there in infinitum, right? This is the  
2 concrete example of how we would've litigated this differently  
3 had we known this is at issue.

4 THE COURT: Okay.

5 MS. VASSALO: I would have briefed this issue for  
6 Your Honor. What is the scope of that confidentiality  
7 agreement? When does it apply? How far does it apply? How  
8 long does it apply? These are all issues that we weren't aware  
9 were even before the Court at this time until this weekend.  
10 And now, we're on her heels trying to figure out we're going to  
11 defend against these claims because the goalposts have shifted.

12 And so while I appreciate that they are making their  
13 arguments, and I hear the Court's, you know, admonition to the  
14 parties that none of this is personal -- none of it is  
15 personal. It's all about --

16 THE COURT: Well, I'm not suggest -- Counsel --

17 MS. VASSALO: Right.

18 THE COURT: -- you only got here.

19 MS. VASSALO: I did, and I would like to leave. No,  
20 I'm just kidding. But --

21 THE COURT: So I will say from my perspective, at  
22 times, this was personal between the attorney -- personal not  
23 for their clients, but personal for other reasons. You know,  
24 you play, you know, you're playing basketball, and guys play a  
25 certain way on the court. You know, their -- I don't want to

1 use the word, but I'm probably going to use it anyway. Their  
2 egos get involved and so they play the game a certain way. But  
3 when they're off the court, they're all fine.

4 But so that's what I'm saying. Don't bring your egos  
5 in here. I'm the only one allowed to have an ego, and I try  
6 not to even bring that in here because it doesn't do any good.  
7 So --

8 MS. VASSALO: And so all I am asking for, Your Honor,  
9 is for an equal playing field in order to be able to advance  
10 our clients' interests, right. We all want to be able to brief  
11 these issues to be able to argue our positions so that we're  
12 able to fairly present the issues to the court so that you can  
13 make a decision on the legal issues and on the merits. I can't  
14 make those arguments I don't have notice of them.

15 THE COURT: Right.

16 MS. VASSALO: And this is not meat on the bones.  
17 It's an amendment that provides a new argument to the Court,  
18 and I'll rest on that. Thank you.

19 THE COURT: Right. And so that's again why I have to  
20 figure out, one, if it's new, and if it is, I'm not hearing it.  
21 Or if it's meat on the bones, which everybody gets to respond  
22 to.

23 Mr. Zahralddin, I'll let you say one thing, and I  
24 have to figure out what I'm going to do.

25 MR. ZAHRALDDIN: Absolutely.

1 THE COURT: And that's it. I think I've heard  
2 enough. I've heard from everybody.

3 MR. ZAHRALDDIN: Absolutely.

4 THE COURT: And we'll --

5 MR. ZAHRALDDIN: So they're saying that there's Count  
6 IV of our -- sorry, Count V of our original motion is breach of  
7 contract. So --

8 THE COURT: Breach of contract against you?

9 MR. ZAHRALDDIN: Well, Stastney.

10 UNIDENTIFIED SPEAKER: That's the employment  
11 agreement.

12 MR. ZAHRALDDIN: Yes.

13 UNIDENTIFIED SPEAKER: Of the complaint, Mister --

14 MR. ZAHRALDDIN: Yes, of the complaint.

15 UNIDENTIFIED SPEAKER: It --

16 MR. ZAHRALDDIN: Sorry, my fault.

17 UNIDENTIFIED SPEAKER: And lender liability's claim  
18 19.

19 MR. ZAHRALDDIN: And lender's liability claim 19.

20 THE COURT: I get all that. But in your motion, did  
21 you say -- I think what their position is, when you filed your  
22 motion for the TRO, what did you say you were going to assert  
23 as the basis for the relief you were seeking? Did you put them  
24 on notice that you were going to say Mr. Stastney breached his  
25 contract? I get the trade secrets -- I've heard that. But I

1 think that's what their position is, is that you never  
2 identified that as the basis for the relief you were seeking.  
3 And now you've added it, and they never had notice that that's  
4 the basis on which you were proceeding.

5 MR. ZAHRALDDIN: Your Honor, in the cases that we  
6 originally cited and the cases afterwards, it is a fairly  
7 common fact pattern that when someone is breaching trade  
8 secrets, when they're misusing them, misappropriating them,  
9 they were a former employee and had an employment contract,  
10 which restricted them or provided convenience and then there's  
11 convenience that survive going forward, plus the --

12 THE COURT: But I'm not --

13 MR. ZAHRALDDIN: -- statutory and common law.

14 THE COURT: -- getting to the merits of who did what  
15 or what employ -- what I am strictly trying to focus on is that  
16 a get you said all these things in the complaint. What I am  
17 trying to figure out is when you came and asked for a TRO, the  
18 basis for that. You didn't -- did you say it's based on every  
19 count we have in the complaint --

20 MR. ZAHRALDDIN: Yes.

21 THE COURT: -- or did you specifically limit it to --

22 MR. ZAHRALDDIN: Yes, Your Honnor.

23 THE COURT: -- so I have to go back and do those  
24 things.

25 MR. ZAHRALDDIN: Okay.

1 THE COURT: That's it. So where I am right now is  
2 I'm going to have to go back. So I don't know how much time  
3 you guys thought was going to be devoted to evidence today.  
4 How many witnesses are we supposed to have -- two?

5 MR. ZAHRALDDIN: We believe two, Your Honor, yes.

6 THE COURT: And then maybe your rebuttal from the  
7 Respondents, correct, Mr. Colby?

8 MR. COLBY: Potentially, Your Honor.

9 THE COURT: Right. I know you said -- I said  
10 perhaps --

11 MR. COLBY: Part of that depends on the outcome of  
12 your thinking..

13 THE COURT: Well, you were going to have one -- even  
14 if they had not filed supplement, amendment, whatever words you  
15 want to use, I understood that you may call Mr. Stastney as a  
16 rebuttal, putting in all this other stuff aside --

17 MR. COLBY: Right.

18 THE COURT: -- that he may have been a rebuttal  
19 witness notwithstanding the issues for today.

20 MR. COLBY: Right. We might have, I think based upon  
21 the record as it stood when we finished on Friday. Frankly, I  
22 didn't think it was going to be necessary because I felt that  
23 the Debtors had, to that point, fallen well short of their  
24 burden. We have to see what happens after Mr. Rajan and Mr.  
25 Robertson --



1 THE COURT: Right.

2 MR. COLBY: -- testify to fully --

3 THE COURT: So what I'm going to do right now -- it's  
4 12:00, and as usual, I haven't eaten today, so I don't want to  
5 be hangry. Mr. Caponi is smiling because he's been the  
6 recipient of that hangry. My, you know. So what we'll do is  
7 we'll come back. I need to continue the -- I need to do a deep  
8 dive, not a surface now, saying, you know, pretty much what I'm  
9 going to do is, this is a motion, this is the supplement, and  
10 figure out how we proceed.

11 MR. COLBY: Yeah.

12 THE COURT: If I find that I believe it's new, and I  
13 don't know yet, we're not hearing any of that. If it is, then  
14 I figure out how to give the parties an opportunity to respond.

15 MR. COLBY: Your Honor --

16 THE COURT: Uh-huh.

17 MR. COLBY: -- if I might, I think that the relief  
18 that Mr. Zahralddin is requesting is instructive. And I  
19 believe Your Honor touched on this in some of your questions.  
20 And that is, is -- and this is what I think we understood to be  
21 the core issue up until Saturday. Is a -- so Debtors came in  
22 and said, the Netherlands court has appointed Mr. Stastney as  
23 director of SCB.V.. We need a TRO to remedy what we say is  
24 going to prevent what we say is going to be irreparable harm  
25 that comes from that.

1           So that's the question. Have they been made a  
2 record. And they say the reason why is because they're going  
3 to be issuing these sublicenses, which is going to cause  
4 Phillips to cancel the license. We spent all day on Friday on  
5 sublicenses, okay? Sublicenses are literally but a footnote in  
6 the new filing. It's only mentioned once in the new filing,  
7 and it's in a footnote. But the question is, does Mr.  
8 Stastney's appointment require this Court to put injunctive  
9 relief around what he or SeeCubic, Inc. can or can't do.

10           And the reason why we submit that that's completely  
11 unnecessary, and it's already in the record, one, Mr. Stastney  
12 testified, and there's been no evidence yet to the contrary --

13           THE COURT: Yet.

14           MR. COLBY: -- that there are no sublicenses that are  
15 going to be eminently a given. It's a potential in the future,  
16 but right now --

17           THE COURT: But he also testified about these  
18 protocol --

19           MR. COLBY: The proof of concept.

20           THE COURT: Proof of concept --

21           MR. COLBY: Correct.

22           THE COURT: -- so okay.

23           MR. COLBY: So very, very early development project.

24           Second, that's not harm to the Debtor because Mr. Stastney  
25 testified that the contracts and the work are taking place

1 within SeeCubic B.V., and so any benefits of them will inure to  
2 SeeCubic B.V. --

3 THE COURT: Uh-huh.

4 MR. COLBY: -- and ultimately Stream or the Debtors,  
5 depending upon the outcome of questions that aren't at issue on  
6 the TRO --

7 THE COURT: Right.

8 MR. COLBY: -- right?

9 THE COURT: Counsel, I would be -- I'm not sure how  
10 the Netherlands court got to where they did, but I'm not quite  
11 -- you know, these parties are all at loggerhead.

12 MR. COLBY: Yes.

13 THE COURT: And now one party, who is taking a  
14 position that -- Mr. Stastney is in several roles. And so I  
15 don't know how that plays out.

16 MR. COLBY: Well --

17 THE COURT: I'm assuming he would do what he supposed  
18 to do, but I don't know.

19 MR. COLBY: Right. And that brings me, I think, to  
20 the third point and then probably a break is appropriate. But  
21 the third point is that the current relief sought is at -- so  
22 there are multiple levels of constraints and controls around  
23 what Mr. Stastney can do in that role. First, subject to  
24 fairly rigorous fiduciary duties under Dutch law; second,  
25 subject to the protocol that was incorporated into the court's

1 order, which is in evidence, and we talked about it with Mr.  
2 Stastney last Friday; third, subject to the Court's  
3 supervision. And the Court has heard all kinds of evidence and  
4 applied to --

5 THE COURT: To the Dutch court.

6 MR. COLBY: Dutch court. And the Court has heard all  
7 kinds of evidence and arguments about what would be best for  
8 SeeCubic B.V., the Dutch entity, and has concluded that at  
9 least for now, subject to those various controls, Mr. Stastney  
10 was the better option than the one put forth by Mr. Rajan,  
11 which was Mr. Park.

12 THE COURT: Uh-huh.

13 MR. COLBY: And so what the request is here is to  
14 issue a TRO that completely overrides that determination by the  
15 Dutch court for Dutch entity under Dutch law.

16 THE COURT: Is it --

17 MR. COLBY: For example --

18 THE COURT: -- is it overriding, or --

19 MR. COLBY: Yes.

20 THE COURT: -- is it saying, Mr. Stastney, we can't  
21 trust you to exercise your fiduciary obligations and don't do  
22 anything that is in violation of that.

23 MR. COLBY: It --

24 THE COURT: I don't know -- is unnecessary?

25 MR. COLBY: It's an override. It's not necessary

1 because the -- we'll call it the do the right thing mandate --  
2 is both part of the Dutch order, part of the protocol, and  
3 subject to the ongoing supervision of the court. What they're  
4 asking for here are things like, for example, enjoining the  
5 Defendants, which includes SeeCubic B.V., from directing or  
6 otherwise contacting employees of Stream or Stream's  
7 Netherlands subsidiaries, which includes SeeCubic B.V..

8 THE COURT: Okay.

9 MR. COLBY: How does that even work?

10 THE COURT: I don't know. But I did hear Mr.  
11 Zahralddin say that there's a website, and I'm presuming I'll  
12 get some evidence, where the companies are combined.

13 MR. COLBY: We can deal with that --

14 THE COURT: Oh, yeah, were going to deal with that.

15 MR. COLBY: The website -- look --

16 THE COURT: No, no, no, no. We are going to deal  
17 with that because that's --

18 MR. COLBY: That's a 2021 website.

19 THE COURT: -- a concern for me.

20 MR. COLBY: It's not combining companies, Your Honor.

21 THE COURT: I don't know what it is, Counsel, but  
22 you're going to give me some evidence.

23 MR. COLBY: That's fine.

24 THE COURT: And so, Counsel, I already said I have to  
25 go back and figure out. Now, unless you're going to tell me

1 how this amendment is not in the original, I think I've heard  
2 enough, and I --

3 MR. ZAHRALDDIN: I just have one thing, Your Honor.  
4 I promise you it will be short.

5 THE COURT: Wait, wait, I'm going to let Mr. Colby --  
6 you get one more thing, Mr. Colby. That's it. What is it --  
7 okay.

8 MR. COLBY: With respect to that, I won't address the  
9 whole theory of the employment agreement because it's already  
10 been addressed by Mr. Stastney's counsel, this whole theory of  
11 lender liability. I mean, that's really what Plaintiff's  
12 Debtor say is the ultimate issue in the case.

13 THE COURT: Well, you guys will go there -- I don't  
14 go deal with that in the case.

15 MR. COLBY: It doesn't appear anywhere in the initial  
16 motion. The question is simply should the relief that they've  
17 requested, which are severe restrictions on SeeCubic, Inc. and  
18 SeeCubic of The Netherlands, SeeCubic B.V., and Mr. Stastney,  
19 in his position, subject to the court's jurisdiction, should  
20 you overwrite what the Dutch court has done.

21 THE COURT: Well, what I'm hearing is not override  
22 that, that court is asking me to do something. And I don't  
23 know what they said, and if they are, that's a whole different  
24 issue. I don't know if they are or they aren't, or whether I  
25 should or I shouldn't.

1 MR. COLBY: All the court has said -- it doesn't  
2 relate at all to the issues on the TRO. All the court has said  
3 is that this is an interim order, putting Mr. Stastney in that  
4 director seat until the issue -- the ultimate issue in the  
5 bankruptcy decided who owns the Technovative share.

6 THE COURT: Well, is that really going to be decided  
7 here?

8 MR. COLBY: Not on a TRO.

9 THE COURT: Well, not even on not a TRO. I thought  
10 that was going to go in the 225. So is that the court they are  
11 referring to?

12 MR. COLBY: Yes. It says -- no, it refers to the  
13 bankruptcy court because it refers -- remember the issue in the  
14 225 has to do with the ability to vote the shares.

15 THE COURT: I know what it is and whether, right, but  
16 what is this -- what is the Netherlands thinking I'm supposed  
17 to do?

18 MR. COLBY: It simply says that it is in -- Mr.  
19 Stastney is appointed until the issue -- and I'll paraphrase,  
20 but it's on page 14 of Exhibit --

21 THE COURT: I have it, page 14.

22 MR. COLBY: Okay, yeah, 5.21.

23 THE COURT: Uh-huh, and B, Section B, that's Exhibit  
24 G. It says until the U.S. bankruptcy proceedings determine  
25 that the shares in Technovative -- they spell a little

1 different -- remained the property of Stream, the security  
2 entries in --

3 MR. COLBY: Right.

4 THE COURT: -- those shares expire or until a judge  
5 decides otherwise. What's that supposed to mean?

6 MR. COLBY: Right.

7 MR. ZAHRALDDIN: It seems like it's a blank check,  
8 Your Honor. But it's --

9 THE COURT: Well, no, it says until a judge. What  
10 Judge? I don't know. In reference to me all the shares remain  
11 the property of Stream, which, like, I don't -- okay.

12 MR. ZAHRALDDIN: And that's ultimately, really the  
13 issue there, it is, you know, essentially the outcome of the  
14 bankruptcy. Can the secured lenders effectively, through the  
15 bankruptcy process, foreclose my debt or not. That's really, I  
16 think, all that -- we submit all that that's saying.

17 THE COURT: Well then, it says in 5.20, that means  
18 until then, until a court -- what court -- decides otherwise,  
19 Stastney will be appointed director of those entities to the  
20 exclusion of Park and Rajan. So is this court thinking that I  
21 can order otherwise he will be appointed director? That's what  
22 it seems like.

23 MR. ZAHRALDDIN: Yes, ma'am.

24 THE COURT: Oh my. Okay. I mean, listen, guys, I  
25 looked at this. Did I go through it try to figure it out



1 because I figured I get to that, you know, go through the  
2 evidence to make a rational decision. I think I need to figure  
3 out where we're going. I think I've heard enough.

4 Mr. Zahralddin, you get one thing.

5 MR. ZAHRALDDIN: Yeah. I just wanted to point out  
6 that Mr. Colby even crystallized this. All of that is put into  
7 place to protect the subsidiary, not to protect the entire  
8 group, the Debtors and the Creditors. So that's why we're  
9 asking for this relief.

10 THE COURT: Well, he says that anything that they do  
11 inures to the benefit of the Debtor and the Creditor. So  
12 then --

13 MR. ZAHRALDDIN: But it doesn't, Your Honor, when --

14 THE COURT: All right.

15 MR. ZAHRALDDIN: -- you'll see. You'll see.

16 THE COURT: Let me figure this threshold matter is  
17 what I'm going to do with the supplement, whether the hearing  
18 that -- the evidence I hear today goes towards what is the  
19 Debtor's position is just what we said and just building our  
20 case for a TRO, or what the Respondents are saying is huh-uh,  
21 this is something new, and we're not prepared to defend. This  
22 is basically trial by ambush, is lack of a better word, is what  
23 I'm hearing.

24 So we're going to be in recess. I'm going to say  
25 let's come back in 45 minutes because I'm going to need a

1 little bit of time to get through -- I'm not looking at the  
2 exhibits. I typically don't look at exhibits until they're put  
3 in the record, I can tell you that, because I try not you.

4 MR. COLBY: But you'll see in the revised order  
5 there's only --

6 THE COURT: I'm not looking at --

7 MR. COLBY: -- two things that were different.  
8 That's it.

9 THE COURT: Okay.

10 Mr. Caponi?

11 MR. CAPONI: Your Honor, if we're going to take a  
12 break, factor in a couple extra minutes so we can eat. Then if  
13 we go forward in the afternoon, we don't have to take a second  
14 break, that probably would --

15 THE COURT: That would make -- that works. That's  
16 why I said 12:45. That gives you guys -- you need more time. I  
17 don't know -- there's nowhere to eat around here. So maybe you  
18 might come back at 1:00. Okay.

19 We're in recess until 1.

20 MR. COLBY: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (Recess taken)

23 THE COURT: Okay, please be seated. Okay. I had an  
24 opportunity to review the original motion and the supplement  
25 amendments. And based on my reading of the original motion,

1 the Debtors were seeking relief in the form of a temporary  
2 restraining order based upon SeeCubic B.V., and I guess  
3 SeeCubic Delaware's intention, alleged intention, to license  
4 the technology that's in dispute.

5           The Debtors also alleged that they were doing this by  
6 using trade secrets that would lead to harm -- let's see  
7 exactly what I tabbed here -- that would result in -- here we  
8 go -- because that there would -- that there was more likely  
9 than not that they would suffer irreparable harm because that  
10 Stream was intended to sell, and that the Defendants were  
11 intending to license the technology. And that activity was an  
12 interference with the Phillips and the Rembrandt license.

13           And it was those -- that interference would result in  
14 losing the benefits of the license and that they could possibly  
15 lose their license from Phillips, lose their license from  
16 Rembrandts, and that the industry quote is a competitive one.  
17 And as a result, their trade secrets are being used, that the  
18 license could be -- license to the technology, license to other  
19 parties, which was prohibited, and that it would cheapen the  
20 value of the technology.

21           And so the new allegations are that now the basis for  
22 the temporary restraining order with at least with respect to  
23 Mr. Stastney is that because he is somehow violating an  
24 employment contract and with respect to the lenders, there's  
25 some sort of lender liability claim.

1           Now, while all of that may have been pled in the  
2 complaint, they are nowhere referenced in the motion. And so  
3 the only thing that is before this Court is what is in the  
4 original motion, which is that you wanted me to issue a TRO  
5 prohibiting the parties from licensing the agreement and taking  
6 other actions that would include using trade secrets.

7           This issue about employment contract -- new issue at  
8 least with respect to the TRO. It might be in the complaint --  
9 that's all fine and well. But that and the lender liability,  
10 that was never asserted as a basis for the TRO. You can't do  
11 it now. It's a new -- two new claims. And more importantly, I  
12 don't even know why it would even be, at least with respect to  
13 the employment contract, there's an allegation that you're  
14 using trade secrets. I don't know why you would even need the  
15 issue of the employment contract. Either they are or they  
16 aren't.

17           So I'm not going to have any testimony or evidence  
18 with respect to the employment contract or any evidence with  
19 respect to the lender liability. The evidence regarding the  
20 use of trade secrets, that was pled. That evidence can be  
21 placed on the record with respect to that.

22           Now, the problem we have is -- how many witnesses do  
23 we have today? Two? The marshals have informed me that there  
24 is going to be a protest starting at 4 p.m. I don't know if  
25 they're telling me that because they want me to end by 4 p.m.

1 or why the purpose of telling me -- telling us that.

2 Didn't they tell -- what time did they tell us?

3 Starting at 4 and heading down to Market to Sixth  
4 Street. So what does that mean for us? Are we supposed to  
5 stop -- I mean, they didn't tell us that just to tell me.

6 Did they say what they wanted us to do?

7 Okay. So that may mean if we go past, you know, if  
8 they're starting at City Hall, I don't think it's going to get  
9 them an hour to get down here, and it's a very difficult -- I  
10 got stuck in that on Friday night -- couldn't get out of here,  
11 couldn't get in the court, including anything at 5:00 on  
12 Friday. See you don't want to be in that. I don't think  
13 anybody's driving -- hopefully you're not parked around here  
14 because if you are, you need to get out of here well before  
15 5:00. If you're walking, I guess you can walk up Market Street  
16 if you're just in a hotel or you're marking [sic]. But if you  
17 are parked anywhere near here, be prepared to not be able to  
18 get out until 8:00 -- at least that's what time I was able to  
19 get out. So I just want to tell you guys that.

20 With that being said, do people think, I mean it's  
21 1:30. Are we going to go past? I mean, if that's not a  
22 problem we can go to 5:00. I just don't know what that means  
23 for the marshals if they're worked that that means -- or the  
24 CSOs -- that's heightened security for them, you know,

25 (Court and clerk confer)

1 THE COURT: All right. So I'm just letting you now.

2 MR. COLBY: Depending on the nature of the protest,

3 Your Honor, I --

4 THE COURT: What do you mean the nature of the

5 protest?

6 MR. COLBY: Well, we're fine doing whatever the

7 others want to do.

8 THE COURT: Well, I'm just trying to figure out, you

9 know, they told us for a specific reason. Whether it was just

10 an FYI or whether --

11 MR. COLBY: Right.

12 THE COURT: -- they didn't specifically say. I

13 understand it's either pro-Israel or pro --

14 MR. COLBY: Okay.

15 THE COURT: -- pro -- pro or pro against. Pro-

16 Israel, okay. Pro-Israel march that's --

17 MR. COLBY: Got it.

18 THE COURT: -- going to start at City Hall. I mean,

19 the other one on Friday was peaceful. I didn't, you know,

20 there was a lot of please, a lot of, you know, more -- I think

21 there was more buses and police than people. But you do have

22 some traffic issues. You do have some issues been able to get

23 from the courthouse to where you're going.

24 MR. COLBY: Yep, understood.

25 THE COURT: I mean, if it's not a problem I'll keep,

1 I mean, well, wait a minute, I would like to be able to get  
2 home.

3 (Court addresses unrelated matters)

4 MR. COLBY: Personally, I think for us, we defer to  
5 the judgment of the Court and the court security officers, and  
6 we're fine.

7 THE COURT: Mr. Zahralddin?

8 MR. ZAHRALDDIN: We're fine, too. The only issue  
9 that I have is Mr. Robertson I'd like to put on first because I  
10 believe he flies away to Africa, and we can have him miss that  
11 flight. Not today, but I think tomorrow.

12 THE COURT: Okay.

13 MR. ZAHRALDDIN: So and he won't be that long, so  
14 that's the only person on our side that's really --

15 THE COURT: Right. I was just -- because the  
16 marshals told me they thought it was important, and I wasn't  
17 quite sure given, I don't know people, if you parked in that  
18 parking lot, forget it -- you're not getting out of here. So  
19 that's all I'm telling people why -- I mean, maybe you just  
20 want to stay, go have dinner, and then move your car later. I  
21 don't know. Okay, all right.

22 So with that being said, I think we understand what  
23 the parameters are with respect to the evidence that's going to  
24 be allowed. All right. So then we can proceed with the  
25 evidence.

1 I think we've talked enough with colloquy for today.  
2 I think we just need to get to the evidence, okay?  
3 MR. ZAHRALDDIN: Okay, Your Honor, then I'd like to  
4 call up Mr. Robertson --  
5 THE COURT: Okay.  
6 MR. ZAHRALDDIN: -- to the stand.  
7 THE COURT: All right. Stop right here.  
8 THE CLERK: Oh, Judge, actually I'm guessing in front  
9 of the microphone.  
10 THE COURT: Oh, okay.  
11 THE CLERK: Sorry.  
12 THE COURT: All right, all right. I didn't know you  
13 change the rules on here.  
14 THE CLERK: Just for this transfer of people.  
15 THE COURT: Okay, all right.  
16 CHARLES M. ROBERTSON, PLAINTIFF'S WITNESS, SWORN  
17 THE CLERK: Would you please state and spell your  
18 name for the record?  
19 THE WITNESS: Charles M. Robertson. That's C-H-A-R-  
20 L-E-S M like Michael, Robertson, R-O-B-E-R-T-S-O-N.  
21 THE CLERK: Could you please state your address for  
22 the record?  
23 THE WITNESS: 10 Via Visione, Unit 201, Henderson,  
24 Nevada, 89011.  
25 THE COURT: Hold on one second.



1 THE WITNESS: Do you need a spelling on Via Visione?

2 THE COURT: All right. Well, we're not being

3 directed to leave at 4 -- they just want us to know.

4 Okay. I'm sorry. I heard unit 201 -- where?

5 THE WITNESS: Henderson, Nevada 89011.

6 THE COURT: Okay. All right.

7 You may proceed.

8 DIRECT EXAMINATION

9 BY MR. ZAHRALDDIN:

10 Q Mr. Robertson, can you please tell us where you're

11 currently employed?

12 A I am working for Stream TV Networks, Inc.

13 Q And did you have any prior positions within Stream or any

14 of its subsidiaries?

15 A Yes. I have been employed with Stream TV Networks as an

16 employee from 2009 until the preliminary injunction order came

17 out in December of 2020. And in parallel with that, from May

18 of 2018 until that same date in December 2020, I was also the

19 chief executive officer of SeeCubic B.V. in the Netherlands.

20 Q Thank you. And in your role as CEO of SeeCubic B.V., did

21 you have any compliance responsibility?

22 A Well, yeah, general compliance. That was the R&D

23 facility. SeeCubic B.V. or SCB.V. was the R&D development

24 group for the overall technology. So the employees all had

25 nondisclosures. We practiced a variety of -- we implemented a

1 variety of practices, I should say, to protect the technology.  
2 So there was encryption on the code, there was encryption on  
3 the content files that were sent out with that.

4 In fact, part of our investor portfolio talked about  
5 how do we protect the IP because there was some concern --  
6 well, you're dealing with a lot of customers in China and there  
7 have historically been some issues about the protection there.  
8 So we did a number of things like, for example, in planning the  
9 chips, right, the -- our business model is to sell chips and to  
10 sell the optical films.

11 So the chips we would use a major foundry like TSMC  
12 in Taiwan. We would get a major chip company like Morningstar  
13 that already makes television chips that are accepted in the  
14 industry. TSMC would then build the chip for Morningstar, and  
15 they would put a little partition in there to keep our  
16 technology separate from the Morningstar technology. That way,  
17 customers can get the benefit of a Stream TV-enabled chip  
18 without us risking our IP for the 3D rendering, putting it with  
19 the -- with the Chinese chip company, for example.

20 On the optical design side, we had a similar  
21 situation. We designed the optics. We would have a third  
22 party manufacturer make those films for us. We wouldn't share  
23 those designs with anyone. Then, those films would be  
24 manufactured and delivered to us. Those films will be glued on  
25 to a regular 2D video panel, and those glued together modules

1 would be delivered to the customers. So the customers who  
2 might be making a television or making a phone or a tablet,  
3 they would never see the optical design that went into it. So  
4 we compartmentalized the different parts of the technology so  
5 that it didn't reside in any one place, so we had some security  
6 through separation.

7 Q And Mr. Robertson, with these -- with all of these  
8 techniques in place, what was the -- what do you think the  
9 consequences would be would any of that breakdown, as the  
10 compliance officer and CEO?

11 A Well, it's a pretty broad question, but it's pretty  
12 significant in that it's a very competitive industry as it's  
13 been acknowledged in the court here. There's not a lot of  
14 players and the glasses-free 3D space. I've watched this  
15 technology from its infancy when we first licensed the  
16 foundation from Phillips, and I saw a very, very rough  
17 technology that could maybe become something. And over the  
18 course of many years, we built it into something. And we've  
19 done head-to-head shootouts with our competitors where  
20 prospective customers said, oh, we might like Demanco  
21 (phonetic). What -- we want to see how that compares with  
22 Stream. Every contest that we did our technology was perceived  
23 as being better. So although we have not been to market with a  
24 mass production meaningful number, empirically and subjectively  
25 in the presentations I've seen, we have, by far, the better

1 performing technology. And if the secrets on how, you know,  
2 what we built on top of Phillips, if those secrets get out,  
3 then anybody can do what we did, and we lose that market  
4 advantage.

5 MR. ZAHRALDDIN: Your Honor, I have no further  
6 questions for this witness.

7 THE COURT: Okay.

8 Cross-examination, Mr. Colby?

9 CROSS-EXAMINATION

10 BY MR. COLBY:

11 Q Mr. Robertson, you stated that you are working for Stream  
12 TV, Incorporated. Are you an employee of Stream TV?

13 A I am a -- excuse me -- I'm a contract employee.

14 Q So that's a no, you're not an employee of Stream TV?

15 A I am an independent contractor for Stream TV.

16 Q Do you consider that to be an employee of Stream TV or  
17 something different?

18 MR. ZAHRALDDIN: Objection, Your Honor. Asked and  
19 answered.

20 THE COURT: Response? He's objecting. Ask him --

21 MR. COLBY: I don't believe he's answer the question.

22 THE COURT: And the question that you were going to  
23 ask him to --

24 MR. COLBY: The question was whether he considers  
25 independent contractor to be an employee of Stream TV or

1 something different.

2 MR. ZAHRALDDIN: Your Honor, we've stated in court  
3 before that there is only one employee right now -- two  
4 actually --

5 THE COURT: All right.

6 MR. ZAHRALDDIN: -- Mr. Park and Mr. Rajan.

7 THE COURT: Overruled.

8 Answer the question.

9 THE WITNESS: I am an independent contractor of  
10 Stream TV.

11 BY MR. COLBY:

12 Q Who is your employer?

13 A I don't -- I'm -- I would be self-employed, I guess, if I  
14 am an independent contractor.

15 Q Are you familiar with an entity named VSI?

16 A I am.

17 Q Is VSI who pays your compensation?

18 A Not currently, no.

19 Q Who pays your compensation?

20 A Currently?

21 Q Yes.

22 A Stream TV Networks.

23 Q When did that begin to occur?

24 A When Stream TV got its DIP bank account open,  
25 approximately month ago, I think.

1 Q You're also involved in VSI's business, correct?

2 A Peripherally.

3 Q That's a yes?

4 A Yes.

5 Q Mr. Robertson, you described various protections on chips,  
6 optical and optical design a minute ago. Do you recall the  
7 testimony?

8 A I do.

9 Q Would a party be able to copy the chip or optical lens  
10 designed just by seeing a demo of the Ultra-D Glasses-Free 3D  
11 technology?

12 A By seeing a demo, no -- by having a demo, potentially. I  
13 should correct that -- having it demo unit in -- in their  
14 possession.

15 Q You were here on Friday before last when Mr. Stastney  
16 testified, correct?

17 A Yes.

18 Q And you heard him describe ongoing developmental projects  
19 with respect to the technology at issue, correct?

20 A Yes, I heard his testimony, yes.

21 Q Okay. You have no first-hand knowledge regarding what  
22 protections are being put in place around the technology in the  
23 course of those developmental projects, correct?

24 A Presently, correct.

25 MR. COLBY: No further questions at this time, Your

1 Honor.

2 THE COURT: Any redirect?

3 MR. ZAHRALDDIN: Yes, Your Honor, briefly.

4 REDIRECT EXAMINATION

5 BY MR. ZAHRALDDIN:

6 Q Mr. Robertson, Mr. Colby asked you if you have any present  
7 knowledge. I'm going to ask you a question. When the Dutch  
8 court appointed the independent director, did you have occasion  
9 to visit the Netherlands and SeeCubic B.V.?

10 A I did, yes.

11 Q When you were there with the SeeCubic B.V., did you make  
12 inquiries into the protection of trade secrets and what was  
13 going on, projects and that type of thing?

14 A I did.

15 Q And Mr. Robertson, can you tell me who you spoke with when  
16 you were there?

17 A I spoke with the independent director and spoke with Bart  
18 Barenbrug.

19 THE COURT: Who?

20 THE WITNESS: Bart Barenbrug, B-A-R-E-N-B-R-U-G.  
21 He's a senior software engineer.

22 THE COURT: Spell that again.

23 THE WITNESS: B-A-R-T --

24 THE COURT: Uh-huh.

25 THE WITNESS: -- last name, Barenbrug, B-A-R-E-N-B-R-

1 U-G.

2 THE COURT: Okay. Barenbrug. Okay, all right.

3 BY MR. ZAHRALDDIN:

4 Q Any others?

5 A And I spoke with Bram Riemens, that's B-R-A-M R-I-E-M-E-N-  
6 S and Patric Theune via Zoom, P-A-T-R-I-C T-H-E-U-N-E.

7 Q And Mr. Robertson, can you tell us what they told -- what  
8 they told you in regard to the protections?

9 MR. COLBY: Objection, Your Honor. Hearsay.

10 THE COURT: Response?

11 MR. ZAHRALDDIN: Your Honor, we're trying to  
12 ascertain what projections were still being -- Mr. Colby opened  
13 the door by asking whether or not Mr. Robertson had personal,  
14 first-hand knowledge. Mr. Robertson has testified he went to  
15 the Netherlands, he went and spoke to the people who would be  
16 in charge of these protections, and I simply want to know what  
17 they told him.

18 THE COURT: All right. And it's a hearsay exception  
19 because it is an out-of-court statement. Don't give me any  
20 exceptions otherwise I'm going to have to sustain the  
21 objection. What's the basis for which I would allow a hearsay  
22 statement? What are you saying that was the basis --

23 MR. ZAHRALDDIN: Well, the B.V. is a defendant, so  
24 these are party admissions.

25 MR. COLBY: Your Honor, B.V. is a party that's not



1 present here because they haven't been served yet. If it's  
2 being offered against B.V., it's inappropriate. If it's being  
3 offered against SeeCubic, it's not a statement by a party.

4 THE COURT: Okay. They haven't been served with the  
5 TRO motion?

6 MR. ZAHRALDDIN: Excuse me, Your Honor?

7 MR. COLBY: They've been served with the complaint.

8 THE COURT: Well, have they been served with this  
9 TRO? They might have not been served with the complaint. My  
10 question is, have they been served with the TRO motion.

11 MR. ZAHRALDDIN: No, Your Honor. We did not serve  
12 them yet with the TRO motion.

13 THE COURT: So their position is it can't be a party  
14 admission because they're not here. They haven't been served.

15 BY MR. ZAHRALDDIN:

16 Q Mr. Robertson, do that there are adequate protections at  
17 this point in time regarding the trade secrets and the licenses  
18 after your visit to the Netherlands?

19 MR. COLBY: Objection, Your Honor. The witness  
20 testified he has no first-hand knowledge of what those  
21 protections may or may not be.

22 MR. ZAHRALDDIN: I don't believe he testified to  
23 that.

24 MR. COLBY: He was direct questioned to -- response  
25 to my question.

1 THE COURT: All right. So you're asking him based on  
2 his understanding, what does he believe it is?

3 MR. ZAHRALDDIN: Yes. Well, yes. And this is  
4 redirect, and so I'm coming to clarify because we've  
5 established that he visited the Netherlands. We established  
6 that he is a contract employee assisting the Debtors who want  
7 to the Netherlands for specific reasons like --

8 THE COURT: And he said he visited the operations?

9 MR. ZAHRALDDIN: Yes, he did.

10 THE COURT: His understanding, based on his visit and  
11 whatever information -- can you tell me what they told him.

12 MR. COLBY: Right. With no first-hand knowledge, the  
13 understanding is based solely on the conversation with these  
14 individuals.

15 THE COURT: No, he said he visited the operations.

16 MR. COLBY: Your Honor, he said he had no first-hand  
17 knowledge --

18 THE COURT: Counsel --

19 MR. COLBY: -- of the confidentiality protections.

20 THE COURT: -- he said he visited the operations, and  
21 he spoke with the independent director, which assumably is Mr.  
22 Stastney, Bart B., spoke with Bram R., and spoke with Patric  
23 Theun. And that the question -- I will allow his answer -- is  
24 his understanding based on his visit and discussions. It's  
25 just his understanding. I'll allow it for what it's worth.

1 Answer the question.

2 BY MR. ZAHRALDDIN:

3 Q You can answer the question, Mr. Robertson.

4 A So my understanding is that the new 8K samples didn't have  
5 the security in place and could not be sent out and left  
6 unescorted because the standard protections that had been put  
7 in place previously were not there with those units.

8 Q And Mr. Robertson, where the folks in the Netherlands  
9 forthcoming with any other information?

10 A Very little.

11 Q Mr. Robertson, can you tell me why they were not  
12 forthcoming?

13 A They --

14 MR. COLBY: Objection, Your Honor. That calls for  
15 speculation about someone else's state of mind.

16 MR. ZAHRALDDIN: I'd like our witness to answer  
17 because I believe he was told why.

18 THE COURT: No, no, no.

19 MR. ZAHRALDDIN: He was told why.

20 THE COURT: Okay. He's objecting on the basis that  
21 that calls for speculation as to somebody else's state of mind  
22 as to why they would not, I guess, give him information. I  
23 don't know.

24 MR. ZAHRALDDIN: And Your Honor, I'm not saying it's  
25 not speculation. I'm saying that they gave him a reason, so --

1 well, if they did, I'd like him to tell the Court.

2 THE COURT: Wait a minute, he can't tell me what they  
3 told him. He can say based on his understanding, he believes.

4 MR. ZAHRALDDIN: Okay, that's fine.

5 THE COURT: Based on your understanding and belief,  
6 why weren't they forthcoming? Your understanding. You can't  
7 tell me anything anybody said. It's based on your observation.  
8 That's all he can tell me is what he observed.

9 So based on your observation, why do you think they  
10 weren't forthcoming? Don't tell me anything they said.

11 THE WITNESS: So that's really a, for me, it's a two-  
12 part answer because my understanding evolved. So my  
13 understanding from March through June was that there was  
14 confusion on their part about who was a legitimate director,  
15 and they presented to me --

16 THE COURT: You can't tell me what they told you.

17 THE WITNESS: There was confusion about whether Mr.  
18 Stastney or Mr. Rajan was director. And until that was  
19 clarified, they wouldn't provide any information. And then  
20 after June 29th, the situation --

21 THE COURT: June 29th what year

22 THE WITNESS: Sorry, June 29, 2023. The situation  
23 did not improve because the independent director, and Your  
24 Honor, I was referring to Jasper Berkenbosch, not Mr. Stastney  
25 as the --

1 THE COURT: Oh, okay. Jasper who?

2 THE WITNESS: B-E-R-K-E-N-B-O-S-C-H. Mr. Berkenbosch  
3 was appointed by the Amsterdam court.

4 THE COURT: Okay, so that independent director?

5 THE WITNESS: Correct. I met with him --

6 THE COURT: Okay.

7 THE WITNESS: -- the day after the -- the hearing in  
8 the Netherlands to discuss -- I'm digressing there. But as far  
9 as my understanding about the lack of cooperation and sharing  
10 of information, including the projects that were being worked  
11 on, it was largely -- they were lacking direction who they were  
12 entitled to discuss anything with and that change from the  
13 dispute between Rajan and Stastney to Mr. Berkenbosch having  
14 been appointed. He would be the one who could disseminate any  
15 information.

16 BY MR. ZAHRALDDIN:

17 Q I'll ask one final question then. Do you believe that  
18 that is an ideal situation for protecting trade secrets?

19 A Can you clarify the question?

20 Q Do you believe that the current situation, as you  
21 understand it, is an ideal situation for protecting the  
22 Debtor's trade secrets?

23 A From the debtor's perspective, no, not at all.

24 Q And you have a similar -- do you have an opinion on how  
25 the situation in the Netherlands is affecting the protection of

1 the licenses?

2 MR. COLBY: Objection, Your Honor, to the extent it  
3 calls for the witness' opinion as opposed to facts.

4 MR. ZAHRALDDIN: The --

5 MR. COLBY: Also, outside the scope of the cross,  
6 which didn't address licenses because the director didn't  
7 address licenses.

8 MR. ZAHRALDDIN: The licenses and trade secrets are  
9 rolled up into one, but I'll withdraw the question.

10 MR. COLBY: They're very different things.

11 MR. ZAHRALDDIN: I'll withdraw the question. I'm  
12 sure we'll have plenty to talk about later, Your Honor.

13 THE COURT: Anything further?

14 MR. ZAHRALDDIN: No, Your Honor.

15 THE COURT: Redirect (sic).

16 MR. COLBY: Yeah, just briefly.

17 THE COURT: Okay.

18 RECROSS EXAMINATION

19 BY MR. COLBY:

20 Q The understanding that you just testified to, Mr.  
21 Robertson, concerning what protections may or may not be in  
22 place around the technology, that's based on your conversations  
23 with the individuals you identified, correct?

24 A Correct.

25 Q You did not, yourself, see with your own eyes, what

1 protections may or not be in place, correct?

2 A Those are not visible -- it's computer code.

3 Q Okay, thank you.

4 MR. ZAHRALDDIN: Your Honor, we can excuse the  
5 witness if it's okay with you.

6 THE COURT: Okay.

7 You may be excused, Mr. Robertson.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Okay. All right.

10 Counsel, are you going to call the next witness?

11 MR. KODOSKY: Your Honor, we call Mr. Mathu Rajan.

12 MATHU RAJAN, PLAINTIFF'S WITNESS, SWORN

13 THE CLERK: Would you please state and spell your  
14 name for the record?

15 THE WITNESS: Mathu Rajan, M-A-T-H-U is the first  
16 name. Last name is Rajan, R-A-J-A-N.

17 THE CLERK: Would you please state your address?

18 THE WITNESS: 1105 William Penn Drive, Bensalem,  
19 Pennsylvania 19020.

20 DIRECT EXAMINATION

21 BY MR. KODOSKY:

22 Q Mr. Rajan, what relationship do you have with the Debtor,  
23 stream TV?

24 A I'm the founder and CEO, and board member.

25 Q Who makes litigation decisions for Stream?

1 A I do.

2 Q Stream TV filed an adversary complaint against the  
3 Defendants with request for injunctive relief over 60 days ago.

4 THE COURT: Counsel, can you hold just one second? I  
5 need to take a five-minute break.

6 MR. KODOSKY: I'm sorry, Your Honor.

7 THE COURT: All right. We'll be in recess for five  
8 minutes. Thank you.

9 (Recess taken)

10 THE BAILIFF: All rise.

11 THE COURT: Sorry for that interruption. Please be  
12 seated. Okay. You can continue, counsel.

13 BY MR. KODOSKY:

14 Q Mr. Rajan, Stream TV had filed an adversary complaint  
15 against the Defendants with a request for injunctive relief  
16 over 60 days ago, correct?

17 A Correct.

18 Q And then within the last two weeks, Stream TV has filed a  
19 request for a temporary restraining order; is that correct?

20 A Correct.

21 Q What caused Stream TV to file a motion for a temporary  
22 restraining order now?

23 A That happened for about four different reasons, what  
24 caused the emergency as to why we went from just an injunction  
25 to a TRO. The first one was I had travelled to the Netherlands



1 at least two times this year, and in my -- at that time I was  
2 the CEO and the director of the Netherlands, and in that  
3 process we found that they were, SeeCubic of Delaware and the  
4 B.V. on instructions from SeeCubic of Delaware, were violating  
5 trade secrets, unfortunately landed up in the hospital, and  
6 then when I got out we filed a -- the adversary complaint.  
7 There was widespread trade secret violation.

8           Then the other reason was we -- there was hearings in  
9 Amsterdam where Mr. Stastney testified and I was on the Zoom  
10 call, unfortunately then, I'd just gotten out of the hospital  
11 again or else I would have been there in person, but we were on  
12 a video camera on the Zoom call where he testified under oath  
13 that Stream TV has one business model, we sell components or  
14 chips or devices, and you know, that chipped in the film, and  
15 SeeCubic of Delaware has a sublicense model.

16           He said very clearly that SeeCubic of Delaware is  
17 competing against Stream TV. He made the statement like that  
18 let the two companies compete, whoever is the best company can  
19 win. He indicated in his testimony that there was widespread  
20 discussions with companies around the industry on a sublicense  
21 model which would have caused us to lose our Phillips license.  
22 I had already known they were violating the Rembrandt license  
23 with the trade secret violations and a number of other things.

24           Then, and we were at grave risk of losing our  
25 Phillips license at any moment with the behavior of SeeCubic of

1 Delaware. Then, then it went further. He wanted to become --  
2 when I went into the hospital I was a director, when I got out  
3 of the hospital I was removed. I was out.

4 So he wanted to become the director of the  
5 Netherlands where he would have access to all of our  
6 specifications, and he would have access to our designs, he  
7 would be reviewing resource requirements, and he's basically  
8 working for a competitor, and it was clear he was exercising a  
9 huge amount of dominion and control over a company that is in  
10 bankruptcy.

11 Q Who's the competitor?

12 A SeeCubic of Delaware, Hawk In, SLS, all of them.

13 Q And what is his position with any of those entities?

14 A He's the CEO and chairman of SeeCubic of Delaware, and  
15 he's also, I believe, the managing director of SLS, and Hawk is  
16 now reporting to him on this particular matter.

17 Q You were present at the hearing that was held in this  
18 matter on October 6<sup>th</sup>?

19 A What did you say?

20 Q Were you present for the hearing that was held in this  
21 matter on October 6<sup>th</sup>?

22 A Yeah, in this court, yes, correct.

23 Q Were you present for Mr. Stastney's testimony?

24 A Yes, I was.

25 Q What did you hear Mr. Stastney say with regard to

1 SeeCubic's discussions with customers and potential customers  
2 here in court?

3 A What he said was here, he had three running projects, he  
4 testified in -- here in Philadelphia, that he has three running  
5 projects in the Netherlands for technology demonstrators which  
6 are demo units, and in Amsterdam he said it was 11 to 12. Then  
7 he furthermore said that they have spoken to a hundred  
8 companies regarding -- regarding the technology. Then he had  
9 four companies that he asked for \$5 million from, and he said  
10 he asked them for \$5 million each for an investment into  
11 SeeCubic.

12 Q What are the implications for the debtors and the debtors  
13 estate based upon Mr. Stastney's testimony?

14 A Well, one for the trade secrets, you know, it's causing  
15 horrible damage to Stream TV and to the debtor and to the --  
16 and Technovative, and the debtor's assets on the fact that he  
17 had told hundreds of investors also about a sublicensing model,  
18 and is at least 300 people, possible more, know about it which  
19 is in direct violation of our relationship with Phillips,  
20 Stream TV could lose its license at any moment which is  
21 absolutely irreparable damage. There's also a huge problem now  
22 with the Rembrandt license because now there's trade secret  
23 leakage which involves one of the Rembrandt claims.

24 Then on top of it he's going to have access to our  
25 engineering designs, engineering specifications, and he's going

1 to decide if the Netherlands people are going to work on Stream  
2 TV and Technovative projects which is a direct interference in  
3 the debtor and the debtors estate, and it's going to cause us  
4 irreparable damage, one because our customers and their  
5 specifications, their information is going to go to a  
6 competitor, and all -- and now his sublicense model's basically  
7 dead because Phillips has sold the patents and said no more  
8 licensing, so now he's going to learn about our chips and our  
9 films and how we're doing everything to sort of resuscitate his  
10 company, and so he's going to learn all of that in his role as  
11 a director.

12 And then the other big issue is basically telling  
13 everybody about sublicenses, and Phillips is very clear,  
14 there's no more licenses, sublicensing is dead, so they have  
15 every right to cancel our license as we speak, and Rembrandt  
16 has a massive claim because of all the trade secret violations.

17 Q And what trade secret violations are you referring to?

18 A When I went to the Netherlands in my role as director of  
19 the Netherlands and CEO of the Netherlands, first question that  
20 I asked, what is happening with the trade secrets so I had an  
21 investigation. The rumors flying all over the industry and  
22 that the protocols between SeeCubic of Delaware and the  
23 Netherlands changed between the protocols of Stream TV and the  
24 Netherlands. We encrypted all the code inside the chips and we  
25 crypted all the content, meaning Stream TV and Technovative.

1           And we also put additional protections in to protect  
2 the technology demonstration units. There were three major  
3 trade secret violations just on the surface level  
4 investigation, didn't even get into the other aspects of it. I  
5 saw an automotive device that was not as good as the one that  
6 Stream TV made, the quality wasn't good, and in my work with  
7 the engineers there, the content was not locked. So anybody  
8 could go in, grab the content, and figure out how we make  
9 content, which is one of our trade secrets, and one of the  
10 claims of Rembrandt.

11           The they had an 8K TV. The quality of the 8K TV was  
12 not as good as the Stream TV 4K, 8K like that Stream TV had,  
13 and apparently what was happening was they were working with  
14 content companies, their India team, and they're basically  
15 mapping to the device, and as it's sharing a whole bunch of  
16 trade secrets to compensate for some of the quality issues.

17           Stream TV's doing content deals right now. We have  
18 major content deals we have worked on. We share zero of the  
19 content. Everything's encrypted, everything's protected, we  
20 don't let people go map into the device. That's what they were  
21 doing. So the Hyundai sample put Stream TV and Technovative  
22 and the debtors estate at risk. So did the 8K TV's.

23           Then I was even more shocked to learn that they have  
24 unlocked the gaming protocols for gaming companies. So  
25 basically now you're going to have gaming companies going in

1 and mapping into our device. That is a major trade secret of  
2 Stream TV and Technovative, and SeeCubic of Delaware just  
3 opened the whole thing up.

4 Q You mentioned protections that Stream TV has put in place  
5 to protect its trade secrets. Tell us what protections Stream  
6 TV has put into place to protect trade secrets.

7 Q Well, we had a huge list of all kinds of security and  
8 trade secret protections, you know, everything from, you know,  
9 camera security system in the Netherlands as well as we had one  
10 in --

11 Q I'm sorry, I missed that.

12 A I mean, we had a -- a huge list of protections we had put  
13 in for trade secret and intellectual properties that --

14 Q Tell us what those are, please.

15 A Huh?

16 Q Tell us what those protections are.

17 A Yeah, about -- yeah. So I mean we had everything from  
18 security cameras to -- we would have rotation on the codes and  
19 things off of the servers, and the servers were encrypted and  
20 protected where we had hosted the code. Employees couldn't  
21 leave the code on their laptops. They were -- they were set up  
22 as, like, client servers so people could not take things at  
23 home. Then the devices themselves, the demo units, all of the  
24 content were encrypted, the codes were encrypted. We also put  
25 in a security chip that you could get from a military security

1 company. We had put that into place, as well.

2 And what we did was we had at Stream TV brought in  
3 people to handle the electronics, brought in people to handle  
4 the security because in the Netherlands, that wasn't one of  
5 their strong suits, was the security. Then we brought in  
6 people to also handle, like, manufacturing trade secrets and a  
7 number of other things.

8 Those things all reside at Stream TV as well as the  
9 knowledge for manufacturing and knowledge for electronics, all  
10 those things reside at Stream TV, so all of that was put in  
11 place, but I was adamant on day one that not one sample's going  
12 to go out unless the content's encrypted, and all the code is  
13 encrypted, not one sample. And here, they were sending samples  
14 off to Hyundai and sharing things with studios in Hollywood and  
15 opened the whole kimono up to gaming companies.

16 Q Mr. Rajan, you've mentioned --

17 MR. COLBY: Sorry. Sorry.

18 THE COURT: Yes?

19 MR. COLBY: I think Mr. Rajan has gone well beyond  
20 the bounds of what the original basis for the TRO was. I  
21 understand broadly speaking they used the word "trade secrets"  
22 but he put a declaration in this case that mentioned none of  
23 the things that he just testified at length about. If they  
24 were as critical as he says they were and he was aware of them  
25 after his trip to the Netherlands back in September you'd think

1 they would have been part of this. All we got here was I was  
2 in the hearing in the Netherlands and I heard Mr. Stastney say  
3 A, B, and C.

4 So again, this is -- maybe it falls broadly within  
5 the legal claim that they identified early on, but as a factual  
6 matter this is entirely new. I'll leave it obviously within  
7 your discretion how to deal with it, but just putting something  
8 on the record so that I could maybe later request we have a  
9 fair opportunity to respond to those facts. That's all.

10 THE COURT: Counsel's response?

11 MR. KODOSKY: Your Honor, our motion for a temporary  
12 restraining order clearly referenced the misappropriation of  
13 trade secrets. The case law that I've reviewed that deals with  
14 temporary restraining orders and preliminary injunctions being  
15 granted or denied often depend upon what is a description of  
16 the trade secrets that have been misappropriate, what were the  
17 reasonable steps that the company took to protect the  
18 confidentiality of the trade secrets, things of that nature.

19 And so to the extent that Mr. Rajan is here to  
20 testify live and in person, you know, the declaration that was  
21 filed in support of the motion was not all of the evidence that  
22 we intended to submit to the Court in support of the motion.  
23 Our plan all along was to bring Mr. Rajan here to testify.

24 And so I understand the Court had ruled, has ruled  
25 about the employment agreement, and that we're not to bring in



1 the employment agreement that Mr. Stastney has testified to,  
2 but my next question was -- to Mr. Rajan was going to be  
3 whether or not in addition to the protections he's already  
4 mentioned, what agreements, if any, that Stream such as  
5 NDA's --

6 THE COURT: Wait a minute, wait a minute, wait a  
7 minute, wait a minute.

8 MR. COLBY: Yeah.

9 THE COURT: Okay.

10 MR. COLBY: Your Honor, I think Mister --

11 THE COURT: I get it. I'm going to allow it because  
12 they said they were misappropriating trade secrets, and to me,  
13 just because you -- I mean, your declaration isn't limited, so  
14 I think it's okay for him to testify on how he believed they  
15 were misappropriating trade secrets.

16 MR. COLBY: Well, Your Honor, actually, the -- what  
17 Mr. Kodosky just stated was the definition of litigating by  
18 ambush. We intended to bring Mr. Rajan to testify about the  
19 security protocols and particular units and this and that, but  
20 it was nowhere identified --

21 THE COURT: Well, the question is --

22 MR. COLBY: -- in their papers.

23 THE COURT: -- did you have that in your declaration?  
24 Was it required to say if he had just said misappropriation of  
25 debt, of trade secrets, what would then have been your response

1 if you didn't go into detail?

2 MR. COLBY: Yeah, certainly. If there was fair  
3 warning that the issue was going to be about particular  
4 encryption or security protocols or whatever in -- in the  
5 Netherlands, then we would have prepared differently. What the  
6 -- and when we were here before, the basis for the TRO motion  
7 was the September 13<sup>th</sup> hearing, the outcome of the September 13<sup>th</sup>  
8 hearing, what Mr. Rajan just testified had nothing to do with  
9 the hearing, it had to do with some visit other than that. I  
10 would also point out that in his declaration --

11 THE COURT: Uh-huh.

12 MR. COLBY: -- every single -- all the paragraphs  
13 either identify the issue about customers, talking to customers  
14 about sublicensing, or every paragraph, sublicense, sublicense,  
15 sublicensing, customer base, Phillips, sublicense. That's the  
16 entire substance of what the purported factual basis for the  
17 claim was. This is an entirely new factual basis for the  
18 claim.

19 So look, I understand it fits broadly within the  
20 category of trade secrets, but if this was so important, if  
21 this was so important that it's the basis for issuing a TRO  
22 today, one would think it would have been mentioned in the  
23 factual assertions that formed the basis of the motion when  
24 they tried to get it ex parte from the district court, or when  
25 they tried to get it heard within 24 hours here. It is another

1 moving target.

2 THE COURT: Counsel?

3 MR. KODOSKY: I think it's a nonsense objection, Your  
4 Honor. With all due respect, we've -- we've -- clearly have  
5 asked for a temporary restraining order based on  
6 misappropriation of trade secrets. We're here to ask Mr. Rajan  
7 today what are those trade secrets, what protections were in  
8 place to protect the confidentiality of those trade secrets,  
9 and he is here and has already gone over a long list of  
10 protections that the company has in place to protect the  
11 confidentiality of the trade secrets.

12 THE COURT: I'll allow it for what it's worth.  
13 Continue.

14 THE WITNESS: So Stream and Technovative have  
15 engineers who could -- who are security experts who can go in  
16 and fix this but I was removed as director when I was in the  
17 hospital, so right now we can't fix it until we get this  
18 somehow resolved immediately.

19 BY MR. KODOSKY:

20 Q What if any written agreements does Stream TV have with  
21 customers or employees with respect to protecting the  
22 confidentiality of the trade secrets?

23 A They signed contracts that have -- and paperwork, they  
24 keep all the trade secrets and other materials confidential and  
25 they're supposed to protect all of it, but they were operating

1 under instructions from SeeCubic of Delaware.

2 Q Mr. Rajan, we're going to switch subjects. What did the  
3 Delaware Supreme Court rule 15 months ago, in June 2022?

4 MR. COLBY: Objection, Your Honor. Relevance.

5 THE COURT: Counsel, relevance?

6 MR. KODOSKY: I'm sorry, Your Honor?

7 THE COURT: He's objecting on relevance.

8 MR. KODOSKY: To the extent that the Supreme Court  
9 had ordered them to turn back over the assets and they have not  
10 done that to this point, and we have asked as part of our  
11 motion for a temporary restraining order for that to be done,  
12 that's the relevance.

13 MR. COLBY: I think we all know what the Supreme  
14 Court order says. If that's how we want to spend our time  
15 today, fine, but I don't think it's relevant to the supposed  
16 immediate irreparable time that -- that we're supposed to be  
17 here for, so I'll withdraw my objection.

18 THE COURT: All right. Proceed.

19 MR. COLBY: I'd like to stay focused.

20 THE COURT: Counsel?

21 BY MR. KODOSKY:

22 Q What did the Delaware Supreme Court rule in June of 2022?

23 A The Delaware Supreme Court overturned the Chancery Court's  
24 decision five-zero thus saying the omnibus transaction was  
25 legal and vacated the Chancery Court's 82-page opinion so it's

1 not supposed to be used for any legal purpose whatsoever, and  
2 then it remanded it to the court to execute this order for  
3 Stream TV.

4 Q And what did the Chancery Court order?

5 A The Chancery Court ordered all assets to be turned over,  
6 including, not just limited to the bonding machine, but the 8K  
7 TV's, all -- all of SeeCubic's customer lists, all of  
8 SeeCubic's investor lists, all of their projects Stream TV was  
9 supposed to inherit, a new and improved company, they could sue  
10 us for unjust enrichment, but everything was supposed to be  
11 turned over to Stream TV.

12 Q And was that followed?

13 A Only about 5 percent, 95 percent of the assets, they just  
14 kept on hanging on to it and -- or exercising dominion and  
15 control the entire time.

16 Q Are you able to give me any specifics of what they come on  
17 to?

18 A They -- they never gave the bonding machine, they never  
19 gave the company laptops back, they haven't given most of the  
20 emails back, they haven't given the servers back, they haven't  
21 given phone and tablet samples back, they never gave the 8K  
22 samples back, they were interfering with the operations of the  
23 customers, I'm sorry, with the -- the subsidiaries.

24 They were talking to over a hundred customers, and  
25 asking money from four of them, offering and now supplying

1 samples to customers, diverting revenue and money away from the  
2 debtor and the debtors estate, and moving that all away from  
3 the company. They've told hundreds of people that they're  
4 going to be sublicensing. Everybody, even though Phillips sold  
5 the patents and is unequivocal, that there's no more Phillips  
6 licenses, they've been saying that to all kinds of people.

7 Q What impact does it have on the debtors estate, the fact  
8 that the court order has not been followed?

9 A Well, first let me say even though they didn't follow it  
10 because there is tremendous value at Stream TV and  
11 Technovative, we developed a backup bonding solution which  
12 we're now implementing because we didn't get our bonding  
13 machine back, our team is doing the electronics, getting us  
14 into productions right now, so in spite of all the roadblocks  
15 and dominion control that have been thrown up, we have found a  
16 way to fulfill our orders and take care of our customers, we're  
17 putting our own TV's together. We had developed all those  
18 things at Stream TV independent of the Netherlands.

19 I don't know if they're even aware of it, and so  
20 we're going forward, but they have caused hundreds of millions  
21 of dollars of damages to Stream TV and the debtor and  
22 Technovative, and the debtors estate. They diverted huge  
23 amounts of revenue, huge amounts of investment away from the  
24 company, and by not giving these things we've had investors and  
25 customers get very upset with us, not only after we won in the

1 Supreme Court, but very upset after we've been in the  
2 bankruptcy, like, where are the samples, why don't you guys  
3 even have, like, your emails back, all kinds of questions we're  
4 getting, pounded every single day, why they're not following  
5 the court orders.

6 Q Mr. Rajan, as the CEO of Stream TV, are you familiar with  
7 the proofs of claim that have been filed in this matter?

8 A Yes, ma'am.

9 Q Which of the Defendants have filed proofs of claim against  
10 the debtors?

11 A SLS is called --

12 MR. COLBY: Objection, Your Honor. What's the  
13 relevance of that to the TRO issues? It sounds to me like a  
14 lender liability issue which I think we're not doing today  
15 but --

16 THE COURT: Counsel?

17 MR. KODOSKY: To the extent that SeeCubic claims as  
18 part of its proof of claim to have conferred a benefit.  
19 They're essentially suing Stream 37 million dollars for money  
20 that was given to SeeCubic B.V. in connection with their  
21 competition against us, and they're seeking to have that  
22 recovered from Stream TV. My only question was going to be  
23 what benefit have we received in connection with that?

24 MR. COLBY: Again, nothing to do with the supposed  
25 immediate irreparable harm to the intellectual property.

1 That's -- that's an issue, financing issue. We were in front  
2 of this court on -- in April, really has nothing to do with the  
3 issues presented by the current motion.

4 THE COURT: Counsel?

5 MR. KODOSKY: I don't know that I have anything else  
6 to add, Your Honor.

7 THE COURT: Okay. No further questions?

8 MR. KODOSKY: On?

9 THE COURT: On direct?

10 MR. KODOSKY: No, I do, on the proof of claim I had  
11 no further questions.

12 THE COURT: Oh, proof of claim. I'm sorry. No, no,  
13 no. Okay. I thought we were done.

14 MR. KODOSKY: Nothing further to add on it.

15 THE COURT: Okay. All right. Go ahead.

16 BY MR. KODOSKY:

17 Q Have you ever heard the term "CES"?

18 A Yes, I have.

19 Q What is CES?

20 THE COURT: CES? Okay.

21 THE WITNESS: It's a consumer electronic show where  
22 not only just electronics companies, but content companies,  
23 wide-range of companies get together and show new and maybe old  
24 products, and they discuss business. It's held in Las Vegas  
25 every year.



1 BY MR. KODOSKY:

2 Q When is it held? Is there a --

3 A It's usually in January.

4 Q Has Stream TV every exhibited at CES?

5 A We presented every year up until we lost in the Chancery  
6 Court and we won awards a number of years there.

7 Q What was Stream's involvement at CES after it won in the  
8 Delaware Supreme Court?

9 A We were going to go this year but we didn't because we  
10 didn't get our samples back from SeeCubic of Delaware. We sent  
11 some personnel there but we didn't have a booth or anything  
12 this year.

13 MR. COLBY: Objection, Your Honor. Relevance to the  
14 present TRO motion. That sounds to me like something that  
15 happened last January, which was eight months ago and can't  
16 possibly reflect any immediate irreparable harm.

17 MR. KODOSKY: Your Honor, it does go to the immediate  
18 irreparable harm to the extent that the next exhibit that I  
19 would hope to show this witness is evidence that SeeCubic was  
20 at CES, speaking with potential customers regarding the  
21 technology that they had misappropriated from Stream TV.

22 THE COURT: What's SeeCubic? You guys keep saying  
23 SeeCubic?

24 MR. KODOSKY: SCI, the Mr. Stastney's -- the entity  
25 that was --

1 THE COURT: Delaware?

2 MR. KODOSKY: -- that was formed to receive the  
3 assets.

4 THE COURT: SeeCubic of Delaware, right?

5 MR. KODOSKY: Correct.

6 THE COURT: Okay.

7 MR. COLBY: Objection, Your Honor. It was in January  
8 so it can't be the basis of the motion which supposedly arose  
9 as a result of a -- developments in the Netherlands in this  
10 September. That was the basis for today's motion.

11 THE COURT: Counsel?

12 MR. KODOSKY: We believe that it's evidence that  
13 they're out there competing, Your Honor, and to the extent that  
14 we have recently learned, based on Mr. Stastney's continue --  
15 and the continuing harm that it's causing to the debtors and  
16 the debtors estate, that it is certainly relevant.

17 MR. COLBY: Continuing harm would be something that  
18 for the purpose of a TRO would be to prevent some harm that is  
19 about to happen, not something that supposedly occurred, like I  
20 said, ten months ago in January. They can't enjoin what  
21 happened last January.

22 THE COURT: Well --

23 MR. KODOSKY: Your Honor, he's stated that he's  
24 talked to a hundred people, they've got this PPM, the  
25 subscription agreement that's dated October 1<sup>st</sup>. It's

1 continuing harm, misappropriation of trade secrets, and the  
2 ongoing competition continues, continues to cause damage to us.

3 MR. COLBY: Your Honor, the PPM that references  
4 anything about licensing was years old, and during the period  
5 of time prior to the -- we've been through this, was during the  
6 period of time prior to the reversal of the -- by the Delaware  
7 Supreme Court. The subscription agreement references nothing  
8 about a sublicensing business plan, and that was the other  
9 document we looked at that makes representations, you know, to  
10 investors who are going to be investing, has nothing about the  
11 business plan.

12 So I just, again, I'd like to keep moving, like to  
13 stay focused on what the TRO is about, but something that  
14 happened last January isn't the basis of an immediate  
15 irreparable imminent harm.

16 THE COURT: I'll allow it for what it's worth. He  
17 says that they're using trade secrets, they've been doing it  
18 since January, and he said he was doing it again at the  
19 hearing. I'll allow it for that purpose only.

20 Continue, counsel.

21 MR. KODOSKY: Thank you, Your Honor.

22 MR. COLBY: What exhibit is this?

23 MR. KODOSKY: It's 38.

24 MR. COLBY: And is this one of the ones that was  
25 served on Saturday night?

1 MS. VASSALO: Yes.

2 MR. COLBY: And I'll renew the objection, Your Honor.  
3 This is an exhibit that was given to us in the middle of the  
4 night on Saturday, along with several thousand other pages of  
5 exhibits. This wasn't part of the original filing.

6 THE COURT: Well, all right, counsel, respond, saying  
7 you didn't give it to him with the original filing.

8 MR. KODOSKY: Rebuttal, Your Honor. Our witness  
9 exhibit list stated that we reserve the right to rebut, to add  
10 to our exhibit list and to our witness list based upon what we  
11 heard Mr. Stastney testify to. He was the very first witness  
12 that we called, and to the extent that we've added to our  
13 witness exhibit list based upon what we learned and what he  
14 admitted or denied.

15 MR. COLBY: Your Honor, this is apparently an email  
16 that relates to something that occurred last January. There's  
17 been no particular citation to something new that arose by  
18 virtue of Mr. Stastney's testimony. There's nothing new about  
19 this. This is something from January 10th, 2023. There's no  
20 reason why it couldn't have been part of the original motion,  
21 or if it was responsive to something Mr. Stastney said last  
22 Friday, why he needed to wait until the middle of the night  
23 this past weekend to be served.

24 THE COURT: Counsel, response? His position is that  
25 it's from January, I haven't seen it, and that if it was so

1 important, why you didn't confront Mr. Stastney with it in his  
2 testimony, and why you waited until Saturday to identify it,  
3 because clearly you reserved the right to produce documents in  
4 response to Mr. Stastney's testimony. And so response?

5 MR. KODOSKY: Response is it's in rebuttal of Mr.  
6 Stastney's testimony, Your Honor, from the October 6<sup>th</sup> hearing.  
7 We had reserved the right to amend the exhibit list prior to  
8 the hearing.

9 MR. COLBY: Your Honor, they haven't identified  
10 anything in particular in Mr. Stastney's testimony.

11 THE COURT: Well, you haven't let him. You already  
12 objected.

13 MR. COLBY: Your Honor, the question that's been  
14 posed to debtors counsel multiple times, they've not identified  
15 anything, and in fact, if the point is this shows competition,  
16 they have up to now complained that Mr. Stastney disclosed in  
17 the Netherlands proceedings that there was going to be  
18 competition, and that -- I'm taking no position on whether or  
19 not that's true because we disagree with that, but according to  
20 what they say, if this evidence is competition, they say that  
21 was disclosed in the Netherlands hearing, there's no reason why  
22 this couldn't have been part of the initial package or why it  
23 needed to come in, in the middle of the night on Saturday.

24 THE COURT: Counsel?

25 MR. COLBY: Right, and they called Shad, they called

1 Mr. Stastney to the stand, so this really should have been part  
2 of the initial presentation.

3 THE COURT: Counsel?

4 MR. KODOSKY: I think that, Your Honor, I've stated  
5 all that I had to say.

6 THE COURT: All right. I'll allow it for what it's  
7 worth.

8 MR. KODOSKY: Thank you, Your Honor.

9 THE COURT: Go ahead.

10 MR. KODOSKY: Permission to approach?

11 THE COURT: You're marking this as what?

12 MR. COLBY: I'm sorry, if I could just -- I'm done  
13 arguing the objection, Your Honor. I just have a quick point  
14 of clarification on mechanics. We were just given a copy, it  
15 says Exhibit 38 without error. I don't know what that means or  
16 if it's different --

17 THE COURT: Well --

18 MR. COLBY: -- than what we were served on Saturday,  
19 and I try not to directly address opposing counsel, so I'm --

20 THE COURT: Thank you.

21 MR. COLBY: -- asking for the clarification from you.

22 THE COURT: Well, I haven't seen it, so how I'm going  
23 to get a clarification?

24 MR. COLBY: Yeah, I don't know what to do.

25 THE COURT: You need to show it to me and then ask me

1 something. I mean, I'm talking in a vacuum here. What's this?  
2 Mark this Debtors what?

3 MR. COLBY: Well, it's not been admitted yet but on  
4 the list it's Exhibit 38.

5 THE COURT: But for me to -- for me to do anything  
6 with it, I have to see it. It doesn't mean if I see --

7 MR. COLBY: Okay.

8 THE COURT: -- it, it's necessarily admitted. Lots  
9 of times parties will dispute a document and I either admit it  
10 or don't but I have to see it first, so we're marking it as  
11 what?

12 (Counsel confer)

13 THE COURT: All right. This is D38? Wait a minute.  
14 Before you give it to the witness, hold on, don't give it to  
15 him yet because clearly there's some issues with it, so hold on  
16 to it. All right. You said you were going to object to this  
17 without -- before even shown --

18 MR. COLBY: I'm just --

19 THE COURT: -- to the witness?

20 MR. COLBY: Yeah, I'm just requesting clarification.  
21 I've got two copies. One says without error, one says with  
22 black box due to error. I'm just seeking some clarify -- basic  
23 document box here.

24 THE COURT: All right. I don't have -- I only have  
25 one.

1 MR. COLBY: I'm just curious what the difference is  
2 here, if anything. What's the --

3 THE COURT: Well, which one are we showing the  
4 witness?

5 MR. KODOSKY: I'm sorry, Your Honor?

6 THE COURT: Which one are we showing to the witness?

7 MR. KODOSKY: One with no black box on the two line  
8 of the email, the same one that Your Honor has.

9 THE COURT: All right. He's going to ask him about  
10 that one, counsel.

11 MR. COLBY: Okay.

12 THE COURT: D38. I guess you can ask him about  
13 whatever. Okay. All right.

14 BY MR. KODOSKY:

15 Q Mr. Rajan, do you -- you've been handed what has been  
16 marked for identification as D38; do you recognize this  
17 document?

18 A Yes, I do.

19 Q What is it?

20 A This is a letter from SeeCubic of Delaware describing the  
21 things that SeeCubic of Delaware is doing in their company.

22 Q What's the impact on Stream based upon this activity?

23 MR. COLBY: Objection, Your Honor. It's not clear to  
24 me if we're seeking to -- counsel's seeking to admit this or  
25 not, it hasn't been, if so, it hasn't been authenticated, and



1 Mr. Rajan doesn't appear on its face.

2 THE COURT: Counsel?

3 BY MR. KODOSKY:

4 Q Where did you receive this document from?

5 A We received this document from Stream TV shareholders and  
6 they gave it to Stream TV as part of our recordkeeping and our  
7 books and records. This is logged into the books and records  
8 at Stream TV.

9 Q And so to the extent that -- were you the custodian of the  
10 books and records of Stream TV?

11 A Yes, I am.

12 Q Are the documents an accurate record of the information,  
13 matters, and the events that are referenced?

14 A Yes, it is.

15 Q Were the documents made at or near the time of the  
16 occurrence of the matters and events set forth in the document?

17 A Yes, it did.

18 Q Are the documents made by or from information transmitted  
19 by a person with knowledge of those matters and events?

20 A Yes, it was.

21 Q Is the document kept and maintained in the course of the  
22 regularly conducted activity of Stream?

23 A Yes, it is.

24 Q Is it customary practice of Stream to maintain such  
25 records?

1 A Yes, it is.

2 MR. KODOSKY: We move to admit this document as --  
3 into evidence, Your Honor.

4 MR. COLBY: I maintain the objection, Your Honor.  
5 I'm not sure that Mr. Rajan established how an email to  
6 SeeCubic shareholders, of which he is not one, how he could  
7 possibly authenticate this because somebody just handed it to  
8 him to supposedly be logged as he said into the books and  
9 records of Stream TV. It all seems to strain credulity, but  
10 I'll stand on that objection.

11 MR. KODOSKY: Your Honor, he said that it was sent to  
12 Stream TV shareholders if I heard his testimony correct.

13 MR. COLBY: Yeah, it says dear SeeCubic Inc.  
14 shareholders.

15 THE COURT: Okay. And his position is how did it get  
16 to Stream TV shareholders?

17 MR. KODOSKY: And I believe that there's --

18 BY MR. KODOSKY:

19 Q Mr. Rajan?

20 A The SeeCubic shareholders, most of them are Stream TV  
21 shareholders who were improperly moved over to SeeCubic through  
22 the Omnibus transaction. They were ordered back. That's  
23 another thing that wasn't followed. We were supposed to get  
24 all the lists so people could transfer back, and there's  
25 hundreds of shareholders trapped in SeeCubic because the orders

1 aren't being followed. They're really Stream shareholders.  
2 They call them SeeCubic shareholders, but they're really Stream  
3 shareholders, and that those shareholders were ordered back to  
4 Stream TV. That's another order that hasn't been followed.

5 THE COURT: So the answer is that they share  
6 shareholders.

7 MR. COLBY: Okay. So in which case this was sent to  
8 them in their capacity as SeeCubic shareholders. If I'm a  
9 shareholder of IBM and I get an email I'm also a shareholder of  
10 Hewlett Packard, and I get an email from Hewlett Packard, that  
11 doesn't make it a record of IBM because I happened to be  
12 invested in both. I think Mr. Rajan just laid out that they're  
13 precisely different.

14 Mr. Rajan also testified that the shareholders were  
15 ordered to be transferred back. There's no basis for that.  
16 It's also flatly untrue but --

17 THE COURT: Well, he can testify anything you want.  
18 You can ask him on cross-examination, counsel.

19 MR. COLBY: I -- I understand.

20 THE COURT: You don't get to give me a -- let's stick  
21 to what we have which is he says is a business record because  
22 some third party gave it to the debtor. That is not a business  
23 record.

24 MR. KODOSKY: It's also a party admission, Your  
25 Honor. It's sent by SeeCubic.

1 THE COURT: A party admission that is sent by  
2 SeeCubic to its shareholders. Counsel, now he's saying it's a  
3 party admission.

4 MR. COLBY: Okay, well, that's a different case.

5 THE COURT: All right. Let's talk about the -- was  
6 definitely not a business record. Just because somebody gives  
7 you something that's their business records doesn't make it  
8 your business record. It wasn't created by the business. It  
9 has -- never mind. Objection as to business record is  
10 sustained.

11 MR. COLBY: Thank you, Your Honor.

12 THE COURT: Now we're talking about -- and you said  
13 it's a party -- what did you say? Admission, party admission?

14 MR. KODOSKY: Yes, Your Honor.

15 THE COURT: All right. Let's see that one, party  
16 admission, that's -- what's the basis for that? Your response,  
17 counsel? He's saying party admission.

18 MR. COLBY: It -- correct, it is a statement by  
19 SeeCubic. I don't believe then that it has been or could be by  
20 Mr. Rajan properly authenticated, but I'll stand on that  
21 objection. That's all I have to say about it.

22 MR. KODOSKY: Mr. Stastney's going to be called, it  
23 sounds like, Your Honor, if you would rather us ask him and --

24 THE COURT: You're going to recall him? Well, he was  
25 your witness.

1 MR. KODOSKY: He's --

2 THE COURT: And I don't know, can you recall him?

3 Mm.

4 MR. COLBY: Either way, Your Honor, it's an email  
5 dated January 10th, 2023, so it certainly could have been the  
6 subject of questioning when they called him the first time.

7 THE COURT: Counsel? I'll allow it for what it's  
8 worth. You guys want to --

9 (Debtor's Exhibit 38 admitted into evidence)

10 MR. COLBY: Thank you, Your Honor.

11 THE COURT: For what it's worth.

12 MR. COLBY: It's another example of a moving target  
13 here but I will --

14 THE COURT: Well, counsel, you know. They reserved  
15 the right to bring in information and call a witness to counter  
16 Mr. Stastney's testimony, and if they said we were doing this  
17 based on what he testified, I'm not quite sure, and they'll  
18 have to, you know, I'll -- I'll allow it for what it's worth.  
19 Okay?

20 MR. COLBY: Thank you, Your Honor.

21 THE COURT: Go ahead, counsel.

22 BY MR. KODOSKY:

23 Q What impact, Mr. Rajan, does SeeCubic of Delaware  
24 attending CES, the major trade show in the industry, speaking  
25 with potential customers, have on the debtors and the debtors

1 estate?

2 A They are taking revenue and investment away from -- from  
3 Stream TV and Technovative, the debtors estate, they're causing  
4 mass confusion in the market because Stream TV had won in the  
5 Supreme Court, and these things were all ordered back, and were  
6 not given. Then also, the information regarding these  
7 customers and vendors and other relationships regarding CES and  
8 our success at CES, some of the things in there were trade  
9 secrets and business secrets that we kept inside the company,  
10 and SeeCubic was recruiting Stream TV employees over to  
11 SeeCubic, and Mr. Stastney is a former Stream TV employee, so  
12 he learned a lot of these things at Stream TV and was using it  
13 against Stream TV.

14 MR. COLBY: Objection, Your Honor. That was  
15 precluded.

16 THE COURT: Counsel?

17 MR. KODOSKY: I'm ready to move on, Your Honor.

18 THE COURT: Move to strike.

19 MR. COLBY: Yup.

20 MS. VASSALO: I move to strike, Your Honor.

21 THE COURT: Strike.

22 MR. COLBY: Thank you.

23 THE COURT: That's stricken from the record.

24 BY MR. KODOSKY:

25 Q Mr. Rajan, what's your reaction to in Amsterdam, Mr.

1 Stastney saying that 12 companies wanted it but here, he said  
2 that only three companies want it?

3 A He said in Amsterdam that there was 11 to 12 running  
4 projects in the Netherlands, then when he testified here he  
5 said there was only three running projects in the -- in the  
6 Netherlands.

7 Q What's your reaction at such a low conversion rate of  
8 companies wanting the demo units?

9 A I don't know how that's possible that, you know, he's --  
10 he testified that they did meetings with over a hundred  
11 companies, but only anywhere from 10 percent, 3 percent only  
12 want demo units, that's not even remotely our experience, so  
13 clearly, those companies in their communications, which are  
14 supposed to be Stream TV customers, the debtor, and the debtors  
15 estate, they're being communicated something that isn't working  
16 to have such a terrible conversion rate.

17 Q Well, what's the problem with Stastney offering demo  
18 units?

19 A The demo units, in and of itself is a violation of the  
20 trade secrets because in my investigation those demo units, the  
21 contents were not secure for the automotive units, and it's  
22 also one of the claims by Rembrandt, the content. Then the  
23 content was not secured for 8K TV's, and the mapping was being  
24 available to a number of content companies. Then the gaming  
25 was going to be --

1 THE COURT: Just one second. Are we saying AK, 8K?

2 THE WITNESS: 8K.

3 MR. KODOSKY: 8K.

4 THE COURT: Eight?

5 THE WITNESS: Eight.

6 MR. KODOSKY: The number eight.

7 THE COURT: Oh, okay.

8 MR. KODOSKY: That has to do with the resolution.

9 THE COURT: Right, I had AK, but I didn't know if he

10 was saying 8K. Okay. 8K TV's. Okay. I'm sorry. Continue.

11 BY MR. KODOSKY:

12 Q Have you finished your answer?

13 A No, I think I was in the middle -- what was the -- you

14 wanted to know all the things that -- they were open?

15 Q What is the problem with Stastney offering demo units.

16 A Yeah, the problem was with the gaming, it wasn't going to

17 be secured, the content. The 8K TV's, the content was not

18 secured, and they were opening up the mapping to a number of

19 companies in violation of the Rembrandt license. The

20 automotive, the content was open in direct violation of the

21 Rembrandt licenses, and that's the procedure they were

22 following.

23 Q What was the problem with the Netherlands people and the

24 demo units?

25 A The Netherlands people know how to -- they do just simple



1 sort of like technology demo units, and some people call it  
2 proof of concept, they're just very simple units. They're like  
3 show and tell type units. That's what they were able to do,  
4 you know, that -- and they had issues with, you know, security.  
5 That was not one of their strong suits. It's something that,  
6 you know, they had struggled with for years, and then there was  
7 a business decision from SeeCubic of Delaware, let's just open  
8 it open it up on the content side for certain applications, and  
9 that made the situation even worse.

10 Q What is the proper division of labor between the  
11 Netherlands and the U.S.?

12 A In the U.S., first of all, in 2018 we had put our foot  
13 down and said technology demonstrators or proof of concepts  
14 needed to stop, and in 2018 Stream TV started to take the lead  
15 on -- even -- or before that, on the productization of the  
16 technology. So the Netherlands people did the original  
17 formulas, so to speak, but turning it into a product with --  
18 working with the customers, the lead was taken by Stream TV, so  
19 all of the bonding, the mechanicals, the backlight, the 97  
20 percent yield rate, which is certified for mass production,  
21 that was all led and executed by Stream TV, lens designs for  
22 some of the applications, the actual lenses themselves were  
23 handled by Stream TV.

24 Then on the electronics, in taking all of the  
25 original formulas and converting them for mass production which

1 was done in 2018, 2019, was all led by Stream TV, and that work  
2 is done at Stream TV and Technovative, and that's what's  
3 ongoing now, and were going to production.

4 When Stream went down because the projects were  
5 stopped, VSI financed the continuation of that work because we  
6 knew at some point we'd be reunited with the technology. We  
7 knew we were going to win in the Supreme Court, so we knew we'd  
8 have to go to market --

9 MR. COLBY: Objection, Your Honor.

10 THE WITNESS: -- and we've been working on it  
11 nonstop.

12 THE COURT: Objection.

13 MR. COLBY: Objection. Relevance. Not responsive.  
14 Not relevant to the TRO issues.

15 THE COURT: Counsel?

16 MR. KODOSKY: I'm ready to move on to the next  
17 question, Your Honor.

18 THE COURT: Well, I'll strike that. Going to move to  
19 strike, counsel?

20 MR. COLBY: Yes, please, Your Honor.

21 THE COURT: As nonresponsive and irrelevant. Strike.  
22 Next?

23 BY MR. KODOSKY:

24 Q Is Hawk involved in the TRO?

25 THE COURT: Who?

1 BY MR. KODOSKY:

2 Q Hawk?

3 A Yes, Hawk is involved in the TRO.

4 Q How?

5 A Hawk has some of our TV's, they're raising money for  
6 investors, telling people about sublicensing. Bob Morton  
7 himself --

8 MR. CAPONI: Objection.

9 THE WITNESS: -- is doing it and --

10 THE COURT: All right. Objection.

11 MR. CAPONI: I'm not -- I think it's hearsay. I'm  
12 not sure who Mr. Rajan's referring to as Hawk. Hawk is -- if  
13 there's an individual he would like to speak about, I mean,  
14 that's one thing, but he's just generally attributing  
15 statements to --

16 THE COURT: Well, I guess you need to object to the  
17 question because he said it's Hawk, and you should have  
18 objected saying define Hawk. Is that your objection?

19 MR. CAPONI: That's my objection, Your Honor.

20 THE COURT: Because he's responding to the question.  
21 All right. Objection, because there are various entities,  
22 persons; who are you referring to when you say Hawk? He said  
23 it's broad.

24 Right, Mr. Caponi?

25 MR. CAPONI: Yes, Your Honor.

1 THE COURT: All right. Response?

2 BY MR. KODOSKY:

3 Q Who are you referring to, Mr. Rajan?

4 A Hawk Holdings, and also Bob Morton, whose money is Hawk  
5 Holdings, and was in the Hawk officers with TV's, raising  
6 money, and taking money into --

7 MR. CAPONI: Objection, Your Honor.

8 THE COURT: Okay. Objection.

9 MR. CAPONI: Your Honor, I'm sorry, I think Mr. --  
10 one, I think the witness finished answering the question, but  
11 to the extent he's going to go on, Mr. Morton is not present  
12 here today, he has not been served, and he's not a party  
13 against whom any statements made by him can be admitted.

14 THE COURT: Okay. Response?

15 MR. KODOSKY: Who is Mister -- Mr. Caponi has asked  
16 for an extension for Mr. Morton to answer the complaint in this  
17 case and which would qualify as an appearance in our view, Your  
18 Honor.

19 MR. ZAHRALDDIN: And, Your Honor, you did grant that.  
20 They did ask for Mr. Morton. You did grant it so --

21 THE COURT: I did because --

22 MR. CAPONI: I did not ask for an extension for Mr.  
23 Morton. If you look at the footnote I was very clear that he  
24 has not been served, he is not a party.

25 THE COURT: So who did you ask for the -- I --

1 hopefully, I didn't say all defendants --

2 MR. CAPONI: Well, you said --

3 THE COURT: -- when I issued my order.

4 MR. CAPONI: I don't recall what your order said,  
5 Your Honor, I know my request was we asked that because the  
6 debtor was cherry-picking defendants, that the extension, that  
7 all answers be set at the same date, so we did say all  
8 defendants, and made it very clear in a footnote, Mr. Morton  
9 has not been served, they admit he hasn't been served, and I've  
10 never entered an appearance in his behalf.

11 THE COURT: All right. I guess I better go look at  
12 my order because I was clear that I was granting an extension  
13 based on my review of where the parties were, and I don't know  
14 if I defined the word "defendants" in my order.

15 MR. CAPONI: I said I don't have it memorized, Your  
16 Honor.

17 THE COURT: That's all right. Can we -- give me a  
18 copy?

19 MR. CAPONI: But I do know that because I'm very --  
20 one thing I've been very careful about is --

21 THE COURT: Oh, I know you -- you sought, and I saw  
22 footnotes.

23 MR. CAPONI: -- I did not enter an appearance on  
24 behalf of Mr. Morton.

25 THE COURT: I think I was most focused on the basis

1 for the request and my authority to grant it.

2 MR. KODOSKY: Sure, Your Honor.

3 THE COURT: And that was what I focused on. Can you  
4 pull up -- I think it was pretty recent, last week, in the  
5 midst of all the various motions, including the motions  
6 apparently somebody filed and never gave -- in the clerks -- I  
7 don't want to throw the clerk's office under the bus, but never  
8 forwarded it to us. I think we addressed it. I can't even  
9 remember at this point which motion it was, there have been so  
10 many, but there was one that was filed, and that we never --  
11 yeah, for whatever reason I can't get on again.

12 John, I don't know, it's probably because it should  
13 say ADU and not -- I don't know. I can't get on.

14 Okay. My modem -- says Defendant Hawk Investments  
15 Holding L, Limited, and together with all other defendants in  
16 the above-captioned adversary proceeding, the defendants filed  
17 a motion, the extension motion, whereby Hawk seeks on behalf of  
18 all defendants an extension of the deadline to respond to the  
19 complaint.

20 I have a little footnote. Defendants SL (sic)  
21 Holdings VI, LLC, Shadron Stastney, and SeeCubic Inc., filed,  
22 joined to the extension motion collectively enjoinder. All  
23 right. How do I -- oh, wait, I used to -- and upon  
24 consideration of the extension motion, the response and the  
25 joinders, that the response deadline for all defendants is

1 extended. Okay. I guess I used the word "all defendants",  
2 notwithstanding that your original motion only referred to  
3 certain defendants, correct?

4 MR. CAPONI: That my motion was filed on behalf of  
5 Hawk.

6 THE COURT: Uh-huh.

7 MR. CAPONI: And we specifically note it in our  
8 motion that Mr. -- that we did not represent Mr. Morton, he has  
9 not -- the debtors admit they haven't served him, and he's  
10 under no obligation to show up.

11 THE COURT: And that request was not for him?

12 MR. CAPONI: Excuse me?

13 THE COURT: And the request that you were making did  
14 not relate to any unserved party that you may or may not --

15 MR. CAPONI: Correct, Your Honor. And, you know,  
16 Your Honor, I'm sure the next argument we're going to hear, Mr.  
17 Rajan tried to bring in, Mr. Morton has no role whatsoever with  
18 Hawk Investments. Hawk Investments is overseen by a company in  
19 the Jersey Isles named Albanese (phonetic), and there's no role  
20 by Mr. Morton.

21 MR. ZAHRALDDIN: Your Honor, that's not before us  
22 today.

23 THE COURT: Hold on, hold on. Let me read this.  
24 Hold on. All right. I'm not -- this is -- is that the  
25 response? Motion to enlarge time. Okay, Mr. Caponi, this is

1 what you said in the footnote. Which one now was it?

2 It says moreover, the motion for default and proposed  
3 orders specifically include Mr. Aurthur Leonard, Robert Bob  
4 Morton as a named defendant against whom plaintiffs have sought  
5 this spot fault, despite Mr. Morton having obtained an  
6 extension to respond to the complaint. This matter was raised  
7 with plaintiff's counsel who indicated it would be corrected,  
8 but to date, no such correction has been issued.

9 So in your footnote, you apparently say, Mr. Caponi,  
10 that Mr. Morton has obtained an extension to respond to the  
11 complaint.

12 MR. CAPONI: There was an original extension granted  
13 by the Court, yes, Your Honor, but I never, in that original  
14 request which Your Honor memorized and subsequent never entered  
15 an appearance on behalf of Mr. Morton.

16 THE COURT: Well, you asked for a further extension,  
17 so it is what it is, you said what you said, I'm not going to  
18 debate right now. Well, I guess I have to figure it out  
19 because you said you didn't get -- he wasn't served, but in  
20 your original response, was that the response to -- what was  
21 that for?

22 UNIDENTIFIED SPEAKER: That was the --

23 THE COURT: Original motion?

24 UNIDENTIFIED SPEAKER: No, that's -- was the second  
25 entry into the account.



1 THE COURT: Right. So it was a second motion, so  
2 you're saying that the second motion didn't seek an extension  
3 of the response deadline that had already been afforded to Mr.  
4 Morton? Because it said that he'd already been granted an  
5 extension, and there was some discussion with the plaintiffs  
6 about something and why that had not been corrected.

7 So I guess I must have read that to say these are all  
8 the people who are going to get an extension because I'm not  
9 sure why that was in the footnote if he never entered his  
10 appearance and he wasn't served, why would he even need an  
11 extension in the first place?

12 MR. CAPONI: Because the debtors moved for a default  
13 judgment even though they acknowledged they hadn't served him,  
14 and the debtors to this day still haven't withdrawn the default  
15 judgment.

16 THE COURT: I got that but it specifically says that  
17 he had been granted an extension, and if he hadn't been served  
18 I don't know why he would need an extension. I don't know.  
19 What do you -- what's your response?

20 MR. ZAHRALDDIN: Your Honor, I'm the one who dealt  
21 with trying to sort this out. Yes, there was an error on the  
22 motion for default judgment because certain of these  
23 defendants, a motion for default judgment was filed because  
24 they were served. Mr. Morton was inadvertently included in  
25 that.

1 THE COURT: Okay.

2 MR. ZAHRALDDIN: Okay. So when the district court  
3 said we're going to deny this without prejudice, please file it  
4 in the bankruptcy court, which is what they did.

5 THE COURT: You mean the TRO or the --

6 MR. ZAHRALDDIN: No, no, no, the motion for default  
7 judgment because we have three parties that are subject to that  
8 and are defendants.

9 THE COURT: Wait a minute.

10 MR. ZAHRALDDIN: So a motion for default --

11 THE COURT: Why did you take the default judgment in  
12 connection with what?

13 MR. ZAHRALDDIN: With this complaint, not with the  
14 TRO, with the complaint.

15 THE COURT: So the complaint was filed where?

16 MR. ZAHRALDDIN: In the district court.

17 THE COURT: Okay. So you guys have a district court  
18 action.

19 MR. KODOSKY: That was filed here, Your Honor.

20 MR. ZAHRALDDIN: No, well, we withdraw --

21 MR. CAPONI: They moved -- they moved to withdraw the  
22 reference on the file.

23 MR. ZAHRALDDIN: We withdrew the reference on the  
24 complaint and so --

25 THE COURT: Well, that don't mean anything. You keep

1 coming -- I don't understand why you would --

2 MR. ZAHRALDDIN: I understand that Your Honor, be --

3 THE COURT: -- take a default in the district court  
4 for a matter that's pending here.

5 MR. ZAHRALDDIN: Well, that's because it's -- and the  
6 judge said denied without prejudice and refile in bankruptcy.  
7 I haven't filed it yet because we had other things to do.

8 THE COURT: Well, it should have never been.  
9 Counsel, I will tell you.

10 MR. ZAHRALDDIN: Okay.

11 THE COURT: Until the reference is withdrawn,  
12 everything continues in bankruptcy. I will not stop because  
13 the first thing the district court is going to say, well, why  
14 did you stop?

15 MR. ZAHRALDDIN: Understood, Your Honor.

16 THE COURT: Because we may or may not -- and more  
17 importantly, if they don't withdraw the reference, I now have a  
18 case that's sitting in limbo with nothing happening.

19 MR. ZAHRALDDIN: I understand that.

20 THE COURT: Okay.

21 MR. ZAHRALDDIN: My point is this, very simple.

22 THE COURT: What's your point?

23 MR. ZAHRALDDIN: My point is this, we filed the  
24 motion for a default judgment against three people that had  
25 been served.

1 THE COURT: Okay.

2 MR. ZAHRALDDIN: Mr. Morton was inadvertently left on  
3 that.

4 THE COURT: Okay.

5 MR. ZAHRALDDIN: I am not going to include him on the  
6 motion, which I told counsel when we refiled the motion for  
7 default.

8 THE COURT: I -- that's all fine and well, but in  
9 that footnote it said Mr. Morton had granted an extension --

10 MR. ZAHRALDDIN: Extension.

11 THE COURT: -- and time to respond.

12 MR. ZAHRALDDIN: Yes, ma'am, that is absolutely  
13 correct.

14 THE COURT: And counsel is now saying well, he wasn't  
15 served, so he doesn't have anything to do with this, but I'm  
16 not quite sure why it was in the footnote when -- you know  
17 what? Can I see the entire motion because --

18 MR. ZAHRALDDIN: Because the counsel asked for a --  
19 he asked for a extension.

20 THE COURT: Well, he said it himself that he got an  
21 extension for Mr. Morton.

22 MR. ZAHRALDDIN: I know.

23 THE COURT: I don't know why Mr. Morton would need an  
24 extension if he wasn't served.

25 MR. CAPONI: Your Honor, whether -- I think the point

1 is whether the extension was granted or not, Mr. Morton, no one  
2 has entered an appearance in this or any other -- in this court  
3 or the district court for Mr. Morton. He is not --

4 THE COURT: Well, who gave him --

5 MR. CAPONI: -- and is not present here today.

6 THE COURT: Well, whether somebody gave him --  
7 entered their appearance or not, they surely negotiated an  
8 extension of time to respond for him. I don't know what that  
9 would be in, what authority he would be able to do that.

10 MR. CAPONI: Your Honor?

11 THE COURT: I don't know.

12 MR. CAPONI: As we -- as Your Honor has pointed out,  
13 the debtor has proceeded with a somewhat blunderbuss approach  
14 of filing issues in different courts when they shouldn't,  
15 moving for default even when they acknowledge they have no  
16 basis to it --

17 THE COURT: Well, I like that word "blunderbuss".

18 MR. CAPONI: -- causing people to respond and -- but  
19 in our response, because we had no -- we're reacting to chaos,  
20 but we were always very clear to never enter an appearance on  
21 behalf of Mr. Morton --

22 THE COURT: Well, why -- well, who --

23 MR. CAPONI: -- and no one can point to me on the  
24 docket where anyone has entered an appearance.

25 THE COURT: Well, it doesn't -- counsel? You --

1 somebody negotiated something from him, and whether you put  
2 your name on the docket or not, there had to have been some  
3 basis for you to negotiate, because you said that as he's  
4 obtained an extension to respond to the complaint. What  
5 authority would somebody have to do that? Now maybe in the  
6 second one you said I don't care what I did in the past, I'm  
7 only asking for these people, so this matter was raised,  
8 meaning having obtained an extension.

9 MR. CAPONI: Your Honor, I have represented Mr.  
10 Morton in the state court and the Court of Chancery, and I  
11 represent lots of clients. Every client I represent, unless I  
12 enter an appearance in matter, they're not present, or they're  
13 served and they fail to respond, they're not present in the  
14 matter. They want to introduce --

15 THE COURT: Well, then -- but counsel, if you, the  
16 fact that you may not have entered on the record, what  
17 authority would you have had to obtain an extension from Mr.  
18 Morton if you weren't representing him? That's all I'm trying  
19 to figure out.

20 MR. CAPONI: What authority? I was simply passing  
21 along a request, acting as a intermediary facilitator. I  
22 didn't sign any document, an attorney of record, or as counsel  
23 of record for Mr. Morton, and if the debtors wanted that they  
24 could have asked for something and maybe we'd be in a different  
25 position, but they did not. The same, Your Honor, I would just

1 mention the same way if I had an issue with Mr. Rajan's  
2 brother, Roger Rajan, I would speak to debtors counsel because  
3 they facilitate that, but unless they enter an appearance on  
4 his behalf.

5 THE COURT: Well, they may also say, well, we don't  
6 have the authority and what basis would we do anything because  
7 we don't represent him, so why would we be -- if they ask you  
8 for something, wouldn't you -- never mind. I'm just reading  
9 this.

10 MR. CAPONI: Guess they were overly courteous.

11 THE COURT: Okay. Hold on. Yes, and that's why we  
12 did what we did. Mr. Caponi, your second motion says,

13 "The undersigned counsel here filed this motion to  
14 extend time to file and answer pursuant to Rule  
15 9006(b)(1) requesting this Court to extend the  
16 deadline to respond to the complaint for all  
17 defendants for a second time pursuant to Federal Rule  
18 of Bankruptcy Procedure 9000."

19 Okay. You said all -- that's probably why my order  
20 said what it said.

21 MR. CAPONI: Your Honor, I absolutely said all  
22 defendants. And as we explained in the motion, because debtors  
23 were cherry-picking and creating litigation chaos, we were  
24 asking that the Court -- I did not -- I asked on behalf of all  
25 defendants. I did not have any authority for SLS. I had no

1 authority --

2 THE COURT: Well, then why did you file if you didn't  
3 have the authority to ask all the defendants?

4 MR. CAPONI: Because I -- well, I was -- as we argued  
5 in the motion, from a judicial efficiency standpoint, in order  
6 to stop the chaos, we wanted the Court to set a date whereby  
7 all defendants were extended in order to prevent debtors from  
8 stopping this games of asking for discovery from certain, Rule  
9 26 from a different, motion to default from this one, motion to  
10 default parties that they know that have no basis for default.

11 So in order to stop the chaos, as I explained in  
12 detail, we wanted to level set the proceeding to where all  
13 people. That's why the other parties filed joinders, because I  
14 was not representing them or speaking on their behalf.

15 THE COURT: They're not -- Counsel, let me just tell  
16 you. Do not file anything asking for all defendants if you do  
17 not represent all defendants. Because when I read this, it  
18 said all defendants.

19 MR. CAPONI: I apologize, Your Honor, if --

20 THE COURT: And nowhere did you drop a footnote  
21 saying that -- you talked about, in your first paragraph,  
22 they're filing a request of the extension of the response  
23 deadline for all defendants to respond to the complaint in  
24 order to end, as the Delaware Supreme Court, the plaintiffs'  
25 litigation chaos. Nowhere did you advise the Court when you



1 made that request that you said, I don't represent the other  
2 defendant -- at least I don't see it in here. Maybe you said  
3 it somewhere else.

4 MR. CAPONI: Your Honor, I think I would have relied  
5 upon the -- you know, my fault if it wasn't clear, the title of  
6 the motion as well as my signature block, but I take the  
7 Court -- and the substance of the motion I thought conveyed  
8 that message. But if it wasn't clear, that's my fault.

9 THE COURT: Well, Counsel, I don't go by titles.  
10 Titles mean nothing to the Court. You people mistitle motions  
11 all the time. I look at the content. And that is likely why  
12 my order was written the way that it was, was because I -- and  
13 I couldn't understand why I would say that if you dropped a  
14 footnote saying that it didn't apply to Mr. Morton, I would  
15 wonder why I would do something like that, but apparently I  
16 gave you exactly what you asked for, which an extension for all  
17 defendants, and not once did you say, I don't have the  
18 authority to ask that for everybody because I don't represent  
19 them. The other two parties joined in.

20 And again, I do not rely on titles. I don't -- even  
21 if the signature block says one thing, I look at what you asked  
22 for. And I believed what you said was correct, that we needed  
23 to put some deadlines for everybody in here so that we could  
24 have this litigation move smoothly.

25 Now, all of this goes back to whether Mr. Morton --

1 he says Mr. Morton is not here. Mr. Morton is not a party and  
2 he's not represented. I guess Mr. Colby could have made that  
3 argument, I guess. Counsel for Mr. Stastney, anybody, could  
4 have made it, but I'm not quite sure why they would if they're  
5 not representing him. But that's neither here nor there.

6 The question -- and we went off -- we all went  
7 off -- at least I went off on a tangent having to do with  
8 whether he can ask him questions about Mr. Morton given that  
9 Mr. Morton is not here, hasn't -- well, no appearance has been  
10 entered on his behalf. Maybe he'll represent his self. I  
11 don't know.

12 MR. ZAHRALDDIN: Well, Your Honor, the -- my  
13 understanding and what I've read in the Chancery Court docket  
14 below is that Mr. Caponi tried this before in front of Judge  
15 Laster and said that Mr. Morton isn't involved in this, he's no  
16 longer there, and that there was a decision that said, no, Mr.  
17 Morton was definitely involved. He did all these things. Now,  
18 I don't --

19 THE COURT: Well, that's all fine and well but what  
20 does that have to do with me?

21 MR. ZAHRALDDIN: Let me --

22 MR. CAPONI: Categorically false, Your Honor.  
23 Categorically false.

24 THE COURT: All right. I don't --

25 MR. ZAHRALDDIN: Okay.

1 THE COURT: The whole -- I don't know the context.  
2 Doesn't have anything to do with me. I don't know what the  
3 judge was basing his decision on. Unless you're telling me  
4 he's saying, I didn't represent Mr. Morton, he's not in here,  
5 and the Court says, Well, you're doing something, I'm going to  
6 find you representing him. That's the only issue. Because Mr.  
7 Caponi is taking the position, I don't represent him, I was a  
8 facilitator. Now, that's a new one.

9 I also like the word "blunderbuss." Is that what you  
10 said?

11 MR. ZAHRALDDIN: Yes, he did.

12 THE COURT: I thought that was nice.

13 MR. ZAHRALDDIN: He did. It's Mister -- Hawk  
14 Investments, Mister -- I mean Mr. Caponi can disagree, I think  
15 it would be insane if he did, but Hawk Investments Holding  
16 Limited, the holding company, is the family office for Mr.  
17 Morton's family. So you can separate this out. You can say  
18 maybe --

19 THE COURT: Who -- who's the officer of -- is there  
20 an office --

21 MR. CAPONI: Yes, Your Honor.

22 THE COURT: Is it a family trust?

23 MR. CAPONI: Hawk Investments Holdings is equivalent,  
24 in the Jersey Isles, what you would consider to be a trust  
25 here. It is not a family office. It is --

1 THE COURT: It's a -- you said New Jersey?

2 MR. CAPONI: Jersey Isles. The Isles of Jersey off  
3 of Britain.

4 THE COURT: Oh, in Britain?

5 MR. CAPONI: In Britain. Yes.

6 THE COURT: Okay. So in --

7 MR. CAPONI: Jersey, I think, technically.

8 THE COURT: I don't even know where that is --

9 MR. CAPONI: Yeah.

10 THE COURT: -- but if you tell me it's in Britain,  
11 off the Isles, it's fine.

12 MR. CAPONI: And there is a professional trust  
13 company -- this was all -- debtors explored this in detail in  
14 the Court of Chancery. And there's a company called Albanese,  
15 which is a professional trust company.

16 THE COURT: Can you spell that?

17 MR. CAPONI: How do I spell Albanese?

18 THE COURT: Like Albany with an I-E-S?

19 MR. CAPONI: What?

20 UNIDENTIFIED SPEAKER: Like Albany, New York.

21 MR. CAPONI: Like Albany, New York, yes.

22 THE COURT: With an I-E-S? You said Albanese or  
23 Albany' --

24 MR. CAPONI: Albanese, S-E at the end.

25 THE COURT: Okay. I have A-L-B-A-N-I-E-S. Is that

1 close?

2 MR. CAPONI: Yes. I think that's close.

3 THE COURT: Okay.

4 MR. CAPONI: And that is a professional trust  
5 company. And they manage these assets.

6 THE COURT: They manage --

7 MR. CAPONI: All decisions.

8 THE COURT: For Hawks?

9 MR. CAPONI: For Hawk. They make all decisions for  
10 Hawk. They're the only party -- and, again, debtors deposed  
11 the individuals from Albanese in the Court of Chancery below  
12 who testified at length, and Vice Chancellor Laster found that  
13 was correct. So Mr. Morton has -- he's a --

14 THE COURT: Is he a beneficiary --

15 MR. CAPONI: -- 80-some-year-old individual.

16 THE COURT: -- of the trust?

17 MR. CAPONI: No, he's not.

18 THE COURT: What's his relationship, if any?

19 MR. CAPONI: His money, many decades ago --

20 THE COURT: He's the -- he's the --

21 MR. CAPONI: -- founded the trust.

22 THE COURT: -- settler -- he's the --

23 MR. CAPONI: But he's not part of it.

24 THE COURT: He's the one who --

25 MR. CAPONI: Settler.

1 THE COURT: Settler of the trust. He's the one who  
2 established the trust?

3 MR. CAPONI: Technically, he didn't settle the trust.  
4 I think he --

5 THE COURT: Well, isn't the person who  
6 establishes -- I'm not sure if I'm using the right word,  
7 settler.

8 MR. CAPONI: There was --

9 THE COURT: The person who creates it.

10 MR. CAPONI: He was -- his -- it's very technical.  
11 Ultimately, his money went into vehicles, went into vehicles  
12 that got put into the trust, different voting structures  
13 between his wife and other trusts and whatnot.

14 THE COURT: Okay.

15 MR. CAPONI: Very complex.

16 THE COURT: So who created the trust? Somebody had  
17 to create the trust and put in the trust the assets.

18 MR. CAPONI: I think it was a prior marital trust  
19 between him and his wife that ultimately resulted in Hawk, but  
20 it was -- you know, if you want to go -- the genesis was  
21 Mr. Morton's money --

22 THE COURT: Okay.

23 MR. CAPONI: -- that he raised over years.

24 THE COURT: That's all fine and well, Mister -- it  
25 might have created the entities, but somebody had to create the

1 trust, and into the trust put in the assets and named the  
2 beneficiaries. And you're saying at some point some entity,  
3 that Mr. Morton may or may not have funded or created, created  
4 the trust and all of these different assets were placed into  
5 the trust and there's beneficiaries and the trust is managed by  
6 Albanese.

7 MR. CAPONI: The trust is managed by Albanese.  
8 Mr. Morton is not a beneficiary. And the Stream asset, I  
9 believe, was not put into the trust but was an acquisition made  
10 by Albanese as part of their trustee duties.

11 THE COURT: Okay. So Albanese was the vehicle by all  
12 the -- not the vehicle.

13 MR. CAPONI: The trustee, effectively.

14 THE COURT: The trustee who decided to invest and put  
15 this in the trust.

16 MR. CAPONI: Yes. And Albanese to this day is the  
17 sole decisionmaker. Mr. Morton has zero say in what happens  
18 in -- with the Hawk Investment Limited because it's all done by  
19 Albanese.

20 THE COURT: Okay.

21 MR. ZAHRALDDIN: Your Honor, Your Honor.

22 THE COURT: Yes.

23 MR. ZAHRALDDIN: I apologize. Mr. Morton signed the  
24 omnibus agreement himself. Not Albanese, not the trust. So  
25 whatever he's put in the way of this or whatever the deal, I

1 mean, Mr. -- to say Mr. Morton is not involved here -- and  
2 we're going way afield. Because we were talking about --

3 THE COURT: This all boils down to is this a  
4 statement by a party in interest, which Mr. Caponi said it is  
5 not because he hasn't been served, he hasn't been -- entered  
6 his appearance. I get a document that says he's got an  
7 extension.

8 So by some way, I don't know who got it, who didn't,  
9 he somehow has gotten some kind of extension which -- so  
10 typically when you say people aren't involved, they haven't  
11 served, they don't know anything, I'm not quite sure, if you  
12 reach out and ask for an extension, to say, well, you can  
13 argue, you can file a motion to dismiss for improper service or  
14 all sorts of reasons other than an answer, but I'm not quite  
15 sure what to do with -- this is a new one where someone gets an  
16 extension and then say, I haven't subjected myself to the Court  
17 because I haven't formally entered my appearance.

18 And maybe that's correct. I don't know. I have  
19 never had to address that. But the whole issue that we've gone  
20 down this rabbit hole on is whether Mr. Morton's statements or  
21 alleged statements or actions, you know, if it's something he  
22 -- observed on his own, I don't care who Mr. Morton is. If Mr.  
23 Rajan said, I saw Mr. Morton doing these things, then, fine.  
24 But the whole point is I don't know how this is a statement  
25 against interest, unless it's something written by Mr. Morton,



1 he can't tell me what somebody -- I mean, the whole thing is  
2 how does he even know this?

3 MR. CAPONI: Well, Your Honor, point of  
4 clarification. Opposing counsel was wrong. Mr. Morton did not  
5 sign the omnibus agreement. Again, overstating his role.

6 THE COURT: All right. Listen, Counsel --

7 MR. CAPONI: I just want to be clear on the record  
8 about that.

9 THE COURT: Okay.

10 MR. CAPONI: He did sign the omnibus agreement. And,  
11 two --

12 MR. ZAHRALDDIN: Which one?

13 MR. CAPONI: Again, I don't know why we're going down  
14 this rabbit hole. Mr. Morton is not here. If he --

15 THE COURT: Well, even if he wasn't here, Counsel, if  
16 he testified, I observed --

17 MR. CAPONI: I agree with that.

18 THE COURT: But we don't know. He just said he was  
19 in his office.

20 So how about the objection be basis for that  
21 statement, whether Mr. Morton is here or not. If it's  
22 something somebody else told him, pretty easy. Hearsay.  
23 Either he saw him -- because even if someone is not here and  
24 you actually see and say, I saw him doing this --

25 MR. CAPONI: Your Honor, respectfully, I think if I

1 see -- I don't see someone speak, I hear someone speak, and  
2 that's the definition of hearsay. An out-of-court statement  
3 offered for the truth of the matter asserted when the declarant  
4 is not available to defend or rebut when it's not a party  
5 opponent. So Mr. Rajan, if he sees something, he's only  
6 speculating as to what he's seeing. If he hears it and  
7 regurgitates it in court, that's hearsay.

8 THE COURT: Well, let's --

9 MR. CAPONI: That's my position. I understand the  
10 Court has to make a ruling.

11 THE COURT: Right. So with respect to the party,  
12 I'm -- I'm troubled by the fact that he got an extension and  
13 now you say, Well, I did it as a courtesy. Well, then I'm not  
14 quite sure that people can always play the game, I didn't  
15 formally enter. I restate to counsel, he gave me an extension,  
16 I didn't -- what if I had denied the extension knowing that  
17 Mr. Morton had already gotten an extension but hadn't been  
18 served? Did he waive service by getting an extension? I don't  
19 know all that. Now you're creating all sorts of problems for  
20 me.

21 MR. CAPONI: Honestly, Your Honor, I'll tell you  
22 there's no problem because I was very meticulous about this  
23 along the way and --

24 THE COURT: Except you weren't in that motion you  
25 filed.

1 MR. CAPONI: And if Mr. Morton is ever served the  
2 first motion I'll be filing is a motion for lack of personal  
3 jurisdiction but we're not there yet, and I've made sure not to  
4 waive anything.

5 THE COURT: And I don't know whether you'll win that  
6 or not. I have -- I have a very lengthy, I think 80-page  
7 opinion on personal jurisdiction over parties that were in  
8 Canada and their actions here in the U.S., or inaction, because  
9 some people I found were, some people I found were not. Might  
10 want to take a little look at that.

11 MR. CAPONI: I will, Your Honor. Absolutely.

12 THE COURT: I don't remember the name of the case but  
13 it was one that I took a lot of time having to --

14 MR. CAPONI: Understood.

15 THE COURT: You know, at the time it was great  
16 because my daughter was studying for the bar and now we had to  
17 talk about personal interest so she -- we both learned a lot on  
18 personal jurisdiction.

19 MR. CAPONI: You assuredly will.

20 THE COURT: Refresher. Anyway, so, Counsel, the  
21 question to Mister -- back to the question at hand to Mr. Rajan  
22 was something about Hawk and then you said Hawk has -- well,  
23 actually that was -- was Hawk involved in the TRO, and then you  
24 asked the question, Who's Hawk? And then so you asked Mr.  
25 Rajan who's Hawk, and he said Hawk was, I guess, the company

1 and Mr. Bob Morton. Okay.

2 And you're objecting. That's his -- that's his  
3 understanding. You can, I guess, ask him questions. You don't  
4 like his answer but that's his understanding of who it is.

5 MR. CAPONI: Understood. But to the extent he wants  
6 to say Hawk did something --

7 THE COURT: Right. Now the next --

8 MR. CAPONI: -- he has to identify who said it.

9 THE COURT: -- question -- no. The next thing was  
10 Bob Morton was in his office showing off the TVs, and that's  
11 what your objection was, Mr. Morton is not here, he's not a  
12 party, and -- said it was a party -- a statement of a party in  
13 interest, and you're, like, no, it's not because he's not here.

14 MR. CAPONI: Correct.

15 THE COURT: Okay. And I had to figure out, based on  
16 they said, yes, he is here because he got an extension to  
17 answer. And then I looked at the motion and it didn't said he  
18 got an extension, and the question for me is: Well, what does  
19 that mean? Are you -- have you appeared by requesting or do  
20 you have to formally enter your appearance? What does all that  
21 mean?

22 And your position, Mr. Caponi, is I can ask for all  
23 the extensions I want. If I don't answer, I haven't entered my  
24 appearance and I'm not -- I haven't subjected myself to this  
25 Court's jurisdiction because I haven't done anything yet.

1 Correct?

2 MR. CAPONI: Correct.

3 THE COURT: Counsel, your response to that? All of  
4 that to get to this.

5 MR. CAPONI: Yes, Your Honor.

6 THE COURT: Par for the course in this case.

7 Counsel, your response to Mr. Caponi's position that  
8 just because Mr. Morton may have gotten an extension, he is  
9 still not subject to this Court's jurisdiction and any  
10 statement of a party in interest does not apply because he  
11 hasn't formally submitted his self to this Court's  
12 jurisdiction.

13 MR. KODOSKY: I don't know that he needs to be  
14 present for Mr. Rajan to be able to answer the question about  
15 how is Hawk involved with the TRO motion.

16 THE COURT: Well, he said Hawk and more -- I guess  
17 about Hawk, yes, because Hawk is already in here. The question  
18 went to Mr. Morton. Because he started talking about  
19 Mr. Morton and some TVs and showing it to people.

20 MR. CAPONI: Yes, Your Honor. So to be -- put a  
21 finer point on it, if someone were to say Albanese said on  
22 behalf of Hawk, that would be conceivably an admission by a  
23 party opponent. But as I've explained, Mr. Morton is not  
24 a -- not affiliated with Hawk so his statements are not  
25 attributable to Hawk, which is here. They're only attributable

1 to him. And so --

2 THE COURT: And he --

3 MR. CAPONI: -- the debtors admitted -- I mean, it's  
4 a fact. The debtor admitted last Friday it has not even served  
5 Hawk. So it's not like I'm -- I was cute in responding.

6 THE COURT: You mean Mr. Morton.

7 MR. CAPONI: Mr. Morton. Sorry. The debtor's  
8 admitted it has not even served Mr. Morton. So, you know, I  
9 don't know how the debtor can say, I've even served a party but  
10 yet they're deemed present and I get to admit their  
11 out-of-court statements.

12 THE COURT: Because they got an extension. That's  
13 what they said. Well, they got an extension to answer the  
14 complaint; therefore, they're in here.

15 MR. CAPONI: Yes, Your Honor. And to that point, my  
16 client should not be punished for my good -- for my being a  
17 good lawyer and getting an extension without entering an  
18 appearance.

19 THE COURT: Well, the question is can you even --  
20 that was the question, whether you're a good lawyer, bad  
21 lawyer, lawyer any -- any kind of lawyer. The fact that you  
22 reached out to opposing counsel and asked for an extension,  
23 does that then mean that you're subject to my jurisdiction?

24 MR. CAPONI: I think not, Your Honor.

25 THE COURT: You think not, and that's my question.

1 MR. KODOSKY: I think so.

2 THE COURT: On what basis? Somebody tell me  
3 something.

4 MR. KODOSKY: I haven't --

5 THE COURT: On what basis you believe asking for an  
6 extension subjects you to my jurisdiction and means you're now  
7 a party to the matter?

8 MR. ZAHRALDDIN: Your Honor, if someone reaches out  
9 to me, which they did, and we have folks that are overseas, and  
10 several people did reach out to me, not through Mr. Caponi,  
11 etcetera, and they asked for an extension, and I was glad to  
12 give an extension. I never said no to an extension, if they  
13 put in the motion that I filed. I've simply asked for an  
14 accompanying motion in lieu of answer schedule and I asked for  
15 a Rule 26(f). That's it. Instead of getting a response, they  
16 fired off the motions. But I did give --

17 THE COURT: Who -- oh, the motion --

18 MR. ZAHRALDDIN: The motion to extend. But when  
19 someone calls me up in the middle of -- when people are  
20 overseas and they haven't lawyered up and different people have  
21 gone to different folks, I did take it as that I was giving an  
22 extension because I was being asked by someone who is an  
23 official representative. If that was my mistake, that's fine.

24 My only regret is the last 25, 30 minutes of  
25 discussing this. Because I'd rather us get to the evidence

1 here. But, yes, I believe that when someone represents, hey,  
2 can you give an extension to somebody, that they have then  
3 decided they're going to enter the case, if I was mistaken,  
4 then we'll figure out how to get Mr. Morton in later.

5 THE COURT: Okay. Okay.

6 MR. CAPONI: I don't know if that was a withdrawal of  
7 the question, I'll sit down, or if I -- if we're still going on  
8 about this.

9 THE COURT: What are we doing, Mr. Kodosky? Are you  
10 going with the -- the issue regarding Mr. Bob Morton or are you  
11 only going to concentrate on Hawk?

12 MR. KODOSKY: My next question was going to be about  
13 Google.

14 THE COURT: All right. So you're withdrawing the  
15 question, or what?

16 MR. KODOSKY: He's answered my question, I believe.

17 THE COURT: Well, they want to strike his answer with  
18 respect to --

19 MR. CAPONI: Yes, Your Honor. I mean, if he's not  
20 withdrawing -- if he's withdrawing --

21 THE COURT: -- Mr. Morton showing the TV in his  
22 office.

23 MR. CAPONI: Correct.

24 MR. KODOSKY: Just as to Mr. Morton but not Hawk,  
25 Your Honor.



1 THE COURT: All right. Agree to strike the answer as  
2 to Mr. Morton but not as to Hawk.

3 MR. CAPONI: No. Because if the only person showing  
4 a TV or doing whatever was Mr. Morton, he is not Hawk. They  
5 have nobody -- they need to establish somebody from Hawk --

6 THE COURT: Counsel --

7 MR. CAPONI: -- did something, someone with  
8 authority.

9 THE COURT: -- he's agreeing that that testimony can  
10 be stricken.

11 MR. CAPONI: Yes, Your Honor.

12 THE COURT: So why are we talking about it?

13 MR. CAPONI: He said he wants it not stricken as to  
14 Hawk. It has to be stricken as to both.

15 THE COURT: No. He said -- I understood he said his  
16 testimony regarding Hawk and Hawk being involved in the TRO  
17 being -- is that what you were saying? Or you're only  
18 withdrawing it -- which one?

19 MR. KODOSKY: The way you characterized it the first  
20 time, Your Honor.

21 THE COURT: Which is?

22 MR. KODOSKY: As to Hawk, not as to Mister -- as  
23 to -- as to Mr. Morton but not as to Hawk.

24 THE COURT: And so the testimony relates to Hawk how?  
25 I misunderstood what he was -- what he was --

1 MR. CAPONI: Yeah. Sorry, Your Honor. Yeah, I  
2 understood what he just said.

3 THE COURT: I -- obviously I'm out of the loop here.  
4 So you want that testimony to be stricken as to Mr. Morton but  
5 not stricken with respect to looking at the TVs. Is that what  
6 we're talking about, that testimony?

7 MR. KODOSKY: Yes. Yes, Your Honor. About the TVs?

8 THE COURT: Yes.

9 MR. KODOSKY: The TVs that Mr. Morton had stolen --

10 THE COURT: You guys with the stealing, the this -- I  
11 had enough of that. I had enough from somebody. These the bad  
12 guys, you're the bad guys, you're stealing, you're doing this.  
13 Please leave that out. That really doesn't help me, and  
14 actually it sort of irritates me when people start attributing  
15 bad facts and bad things to different parties. And you're both  
16 doing it. Okay? You're both doing it. Please stop. It  
17 doesn't move the ball one iota for me, and it actually makes me  
18 a little jaded when I have to look at this. So let's leave the  
19 descriptions out. They don't help me. Okay?

20 MR. KODOSKY: Yes, Your Honor.

21 THE COURT: So to the issue at hand, you want the  
22 statement regarding Mr. Morton allegedly showing TVs in his  
23 office, or somebody's office, you want that to remain of record  
24 and attributed to Hawk?

25 MR. KODOSKY: Yes.

1 THE COURT: Mr. Caponi, you're objecting on the basis  
2 that?

3 MR. CAPONI: Mr. Morton has no affiliation with Hawk  
4 and, therefore, Mr. Morton's statements are not a statement by  
5 Hawk.

6 THE COURT: Or they have failed to establish the  
7 relationship?

8 MR. CAPONI: Excuse me, Your Honor?

9 THE COURT: He has failed to establish --

10 MR. CAPONI: Yes, he's failed to establish a  
11 connection between Mr. Morton and Hawk.

12 THE COURT: All right. Counsel, I sustain that you  
13 have to -- to establish a relationship between Mr. Morton and  
14 Hawk so that I can find that those statements or actions or  
15 whatever could be attributable to Hawk.

16 BY MR. KODOSKY:

17 Q Mr. Rajan, apart from what you described earlier, are  
18 there any other complaints that we have not spoken to regarding  
19 Hawk?

20 THE COURT: Okay. So we're withdrawing that question  
21 with respect to the TVs and Hawk, which is what I thought we  
22 were doing. Yes? No?

23 MR. KODOSKY: Yes, Your Honor.

24 THE COURT: You withdrawing that?

25 MR. KODOSKY: Yes.

1 THE COURT: All right. See, I had it right, Mr.  
2 Caponi. Mr. Caponi, come on.

3 All right. Go ahead, next question.

4 BY MR. KODOSKY:

5 Q Any other issues with Hawk, other than what you've  
6 described?

7 A Yeah. Hawk has a history of interfering with the -- the  
8 technology and the trade secrets of Stream TV for a number of  
9 years now. There's been -- even when the loans were in good  
10 standing, Hawk went and blocked the company software from a  
11 number of our engineers unbeknownst to the company, went and  
12 blocked the software. So they have a long history of doing  
13 this.

14 THE COURT: All right. Is it being blocked now?

15 MR. CAPONI: Yeah, objection, Your Honor. Not  
16 relevant to the present motion for a TRO.

17 THE COURT: I mean, I did see in the motion that  
18 there was some issue about somebody, I guess Hawk, not  
19 returning some websites and -- where did I read that?

20 MR. CAPONI: Yeah. That was not Hawk. I think the  
21 allegation there is SeeCubic, but that certainly is nothing to  
22 do with -- control over a domain has nothing to do with this  
23 new supposed interference with blocking licenses from years ago  
24 that Mr. Rajan just stated. Whatever that was certainly has  
25 nothing to do with the present, Your Honor.

1 THE COURT: Counsel, objection on the basis of  
2 relevance and what else, Counsel?

3 MR. CAPONI: Not relevant.

4 THE COURT: Okay. Counsel.

5 MR. KODOSKY: I'm ready to move on, Your Honor.

6 THE COURT: All right. Withdrawn?

7 MR. KODOSKY: Yes.

8 THE COURT: Withdrawn. Move on.

9 BY MR. KODOSKY:

10 Q Mr. Rajan, did Stream have a project with Google?

11 A Yes. Stream was working with Google and Stream was an  
12 approved vendor by Google.

13 MR. KODOSKY: Permission to approach, Your Honor?

14 THE COURT: Okay. You have an exhibit that you want  
15 to introduce? Because it's surely not to refresh his  
16 recollection.

17 MR. KODOSKY: Yes, Your Honor.

18 THE COURT: Okay. Hand that to --

19 MR. KODOSKY: D-28.

20 UNIDENTIFIED SPEAKER: 28?

21 MR. KODOSKY: Yes. Can I ask one quick question  
22 while it's being done, Your Honor?

23 THE COURT: Sure. Go ahead.

24 BY MR. KODOSKY:

25 Q Mr. Rajan, why do you think --

1 THE COURT: Don't hold -- you said one before that.  
2 Go ahead.

3 MR. KODOSKY: And the question that I have doesn't  
4 relate to this document, Your Honor, but --

5 THE COURT: So don't hand it to him yet, John.

6 BY MR. KODOSKY:

7 Q Mr. Rajan, why do you believe Mr. Morton is Hawk?

8 A Bob Morton, all of his money went into -- Hawk money is  
9 Bob Morton's money. He negotiated all the deals with Stream  
10 TV, the conversion agreements. He was involved in the omnibus.  
11 And he was ordered to testify in the Chancery Court.

12 MR. CAPONI: Objection. Objection, Your Honor.  
13 Mischaracterizes the order of the Court of Chancery.

14 THE COURT: Okay. But what with respect to that he  
15 negotiated all the agreements with Stream?

16 MR. CAPONI: Sorry, Your Honor, I didn't hear that.

17 THE COURT: His testimony was that Mr. Morton  
18 negotiated all the agreements with Stream and he also was  
19 ordered to testify in --

20 MR. CAPONI: Mr. Rajan testified that the Court of  
21 Chancery ordered --

22 THE COURT: I got that part. I was asking about the  
23 other part.

24 MR. CAPONI: I'm not -- I'm not taking issue with the  
25 prior.

1 THE COURT: Okay.

2 MR. CAPONI: Just the last piece.

3 THE COURT: Okay. And you object on the basis --

4 MR. CAPONI: A, it's hearsay, and B, it's incorrect.

5 THE COURT: Counsel, only with respect to the issue  
6 of Mr. Morton being ordered to testify by the Chancery Court  
7 and the Chancery Court -- presumably, the Chancery Court  
8 litigation.

9 MR. CAPONI: Yes, Your Honor?

10 THE COURT: Presumably, in the Chancery Court  
11 litigation?

12 MR. CAPONI: Yes.

13 THE COURT: Okay.

14 MR. CAPONI: In the 225 proceeding.

15 THE COURT: Okay. Well, there's been a lot of  
16 proceedings; right?

17 MR. CAPONI: Yes, Your Honor.

18 THE COURT: So I don't know which one of them it is.  
19 Okay. Response.

20 MR. KODOSKY: To the objection, Your Honor?

21 THE COURT: Yes. Only with respect to Mr. Morton  
22 being ordered by the Chancery Court to testify in the 225  
23 litigation.

24 MR. KODOSKY: To the extent that he was ordered, I  
25 guess we could ask that he be -- that the Court take judicial

1 notice of that.

2 THE COURT: Where? Is there something on the docket  
3 that says that?

4 MR. CAPONI: It -- it was, in fact, not ordered. So  
5 I'm happy with the Court to take judicial notice of the fact  
6 that the debtor requested -- or the prepetition debtor  
7 requested and their request was denied, if they would like that  
8 entered into the record, I'm okay with that. That would be  
9 accurate.

10 MR. KODOSKY: I believe Mr. Rajan can elaborate.

11 THE WITNESS: Yeah, he would --

12 THE COURT: Whoa, whoa, whoa. He's asking me to take  
13 judicial notice of an order entered on the docket. The only  
14 thing my -- and, Counsel, I think based on my last order  
15 regarding judicial notice, I can only take judicial notice of  
16 what an order says, not a rationale or any of that sort  
17 of -- the Court -- if there's an order that says  
18 Mr. Morton -- the debtor's request to compel Mr. Morton to  
19 testify is denied --

20 MR. CAPONI: Your Honor, I'll make it easy on you.  
21 They can admit that whole order and the whole transcript  
22 related to it --

23 THE COURT: I don't want -- but --

24 MR. CAPONI: -- if they want to. I won't object.

25 THE COURT: They can object -- you can admit it all



1 you want. Third Circuit says I can't read that transcript.

2 MR. CAPONI: No. I just have our issue with Mr.  
3 Rajan trying to admit it.

4 THE COURT: Okay.

5 MR. CAPONI: If they're willing to bring the document  
6 for its -- on its own, bring it out and let's take a look at  
7 it.

8 THE COURT: All right. Counsel.

9 MR. CAPONI: Because it will be accurate. I'm okay  
10 with accuracy.

11 MR. KODOSKY: I'll withdraw that --

12 THE COURT: So, Counsel, he's objecting on the basis  
13 that it's, one, I guess he would have to ask him what's his  
14 understanding, what's his basis, all of those things. Because  
15 he's failed to establish how Mr. Rajan would know that he was  
16 ordered. I mean, maybe you think otherwise, but he could still  
17 try to --

18 MR. CAPONI: I agree. I'm not going to stand on an  
19 objection I know the answer to. Mr. Rajan participated in  
20 these proceedings. But Mr. Rajan trying to speak for the Court  
21 of Chancery is hearsay.

22 If they'd like to enter the order, I'm okay with that  
23 because it will then be accurate and my -- the reason why we  
24 don't let hearsay in, because Vice Chancellor isn't here to be  
25 called to say Mr. Rajan got it wrong. Enter the order, pull it

1 out. It's on the docket. It's public record. I'll have no  
2 issue with that at all.

3 THE COURT: Counsel.

4 MR. KODOSKY: The portion where he said that he was  
5 ordered, Your Honor, we'll withdraw that. But the rest of  
6 the -- the rest of the answer stands.

7 THE COURT: Okay. But he wasn't objecting to the  
8 other answer.

9 MR. KODOSKY: Correct.

10 THE COURT: We'll strike -- move to strike.

11 MR. CAPONI: Move to strike, Your Honor.

12 THE COURT: We'll strike that portion. All right.

13 Next.

14 BY MR. KODOSKY:

15 Q Mr. Rajan, you've been handed what has been marked for  
16 identification as D-28. Do you recognize this document?

17 A Correct.

18 Q What is it?

19 A We had one of our suppliers ship components to SeeCubic of  
20 the Netherlands for the Google project.

21 MR. COLBY: Your Honor, I object to the relevance of  
22 this document on the grounds that it is from 2020 and 2019.  
23 We're going even farther back in time, apparently, for this  
24 line of inquiry. It's got no bearing on whether or not there's  
25 a basis for a TRO now because of immediate, imminent

1 irreparable harm.

2 MR. KODOSKY: Let me get there, Your Honor. I  
3 believe that his testimony is going to be that Mr. Stastney is  
4 hiding the assets necessary to fulfill the order.

5 THE COURT: All right. Counsel, I'll allow him to  
6 try to make a foundation. Go ahead. He says he can prove the  
7 relevance. Okay. Go ahead.

8 MR. KODOSKY: Move for the admission of this --

9 THE COURT: Wait a minute. What did he say it was?  
10 Did we even identify it?

11 MR. COLBY: No, no. I don't believe appropriate  
12 foundation has been laid.

13 THE COURT: All right. We need a foundation.

14 BY MR. KODOSKY:

15 Q Mr. Rajan, are you the custodian of this record at Stream  
16 TV?

17 A Yes.

18 Q Is this a document that is an accurate record of the --

19 MR. KODOSKY: Actually, Your Honor, this is a verbal  
20 act. This is --

21 THE COURT: This is what?

22 MR. KODOSKY: I'm starting to lay the foundation for  
23 a business record, but to the extent that this is not hearsay  
24 but, instead, would qualify as a verbal act --

25 THE COURT: A verbal act?

1 MR. KODOSKY: Purchase order.

2 THE COURT: Oh, a purchase order is a --

3 MR. KODOSKY: Like a contract.

4 THE COURT: That's a new one. So it's an exception  
5 under what hearsay rule?

6 MR. KODOSKY: 801. It's not -- it's not actually  
7 hearsay. It's not being offered to prove the truth of the  
8 matter asserted.

9 THE COURT: Okay. Rule 801. All right.

10 MR. KODOSKY: Establishes the legal obligations and  
11 rights of the parties.

12 THE COURT: Okay. Hold on. 801, what? I got my  
13 little handbooks.

14 MR. KODOSKY: You know --

15 THE COURT: Okay. Definitions that -- okay. So a  
16 hearsay means a statement that the declarant does not make,  
17 while testifying at the current trial, or hearing, and a party  
18 offers in evidence to prove the truth of the matter asserted in  
19 the statement. A statement that is not hearsay is which one?  
20 You're saying a declarant? No, it's not a prior statement. An  
21 opposing party statement, okay. So, which one? What are we  
22 going on, the 801 what?

23 MR. KODOSKY: For verbal acts, Your Honor.

24 THE COURT: Where is it?

25 MR. KODOSKY: Verbal act is not defined in the rule,

1 this is not a --

2 THE COURT: Oh. A statement means a person's oral  
3 assertion, written assertion, or nonverbal conduct, if the  
4 person intended it as an assertion. So you say this is a  
5 verbal conduct so it doesn't meet the statement.

6 MR. KODOSKY: It's legally operative language  
7 accomplishing something through words rather than making an  
8 assertion.

9 THE COURT: Huh. Counsel?

10 MR. COLBY: Well, I guess I wasn't making precisely a  
11 hearsay objection, it was a relevance objection.

12 THE COURT: Okay.

13 MR. COLBY: I would also note that this document is  
14 SeeCubic B.V. The question attempting to lay the foundation  
15 had to do with Stream TV, a different entity multiple levels up  
16 in the organization, and I'd also note that it's unsigned. So  
17 I don't think that there has been an appropriate foundation  
18 laid for the admission or authenticity of this document.

19 THE COURT: Okay. Counsel?

20 MR. COLBY: I'm still unclear for what purpose it's  
21 going to be used. So I'll reserve I guess potential further  
22 objections based on what the questions are, but just on the  
23 face of the document those are apparent issues with it.

24 THE COURT: Okay.

25 BY MR. KODOSKY:

1 Q Let me step back from that, Mr. Rajan, what was the Google  
2 project, and what was the implication for Stream TV?

3 A We were -- Stream TV was working with Google to make a 65  
4 inch 3-D video conference unit. We had shipped components over  
5 to -- from our stream vendors to the Netherlands for assembly,  
6 When unfortunately, we lost in the Chancery Court. The  
7 implication for Stream TV is, as you know, they were, when we  
8 got to Phase 3, it was going to be \$20 million in orders, and  
9 also Google is looking at a possible investment in Stream TV,  
10 which we entered into the Bankruptcy Court. The letter from  
11 Google, the immediacy is now that Stastney is the Director at  
12 the Netherlands, which just happened. We may -- we don't know  
13 when and if we'll ever get our Google stuff back.

14 Q Where is the lens for the Google project?

15 A It's being kept in the -- the Netherlands.

16 Q So has the lens been delivered to Google?

17 A No. The -- the Netherlands are holding everything, the  
18 Google stuff in the Netherlands and Stream TV's understanding  
19 is it's on order from SeeCubic to hold it.

20 Q Where is the Ultra D phone and tablet?

21 MR. COLBY: Sorry. Objection.

22 THE WITNESS: It's being held in --

23 MR. COLBY: I'm sorry.

24 THE COURT: Wait a minute, hold on. There's an  
25 objection. Whoa.

1 MR. COLBY: Sorry. Object, and move to strike the  
2 witness' testimony regarding the Google project, not relevant  
3 to the TRO, which has to do with potential present-day issues.  
4 The witness himself previously testified when he was here  
5 before that the Google project, which goes all the way back to  
6 2018, has been canceled, and so it's therefore irrelevant to  
7 whatever the purported imminent harm is now.

8 THE COURT: Okay.

9 MR. KODOSKY: It's ongoing harm to the Debtor, Your  
10 Honor.

11 THE COURT: Okay.

12 MR. COLBY: Past harm, reparable --

13 THE COURT: Wait a minute.

14 MR. COLBY: -- he put a dollar down.

15 THE COURT: Wait minute, wait a minute.

16 MR. COLBY: It doesn't over relate to irreparable. -

17 THE COURT: Where's the product?

18 MR. COLBY: I'm sorry.

19 THE COURT: Where are the products that everybody  
20 wants, this fighting over?

21 MR. KODOSKY: That's what he said that it is being  
22 hidden by Stastney, over in the Netherlands.

23 THE COURT: Okay. Well, I don't know about Stastney,  
24 but he's saying that the SeeCubic B.V. has it, and hasn't  
25 turned it over. That's what my own question is.

1 THE WITNESS: Who had -- it is being held in the  
2 Netherlands, and I testified earlier in the bankruptcy, we had  
3 a meeting right before the bankruptcy with Google, we are to  
4 turn the unit over, which has not happened since the filing of  
5 the bankruptcy because --

6 THE COURT: Who's we?

7 THE WITNESS: Stream TV is to turn over the Google  
8 Unit. There was a meeting right before the bankruptcy, and the  
9 Google Unit has been held since the bankruptcy in the  
10 Netherlands, and in my role at the time of SeeCubic B.V., CEO,  
11 my understanding was, is being held on instruction by SeeCubic  
12 of Delaware.

13 THE COURT: Okay.

14 BY MR. KODOSKY:

15 Q Okay. Where is the Ultra D phone and tablet?

16 A They're being held in -- in the SeeCubic Netherlands.

17 Q Where are the AK-TVs?

18 A They're being held in SeeCubic of the Netherlands, as well  
19 as in the Jersey Island and Hawk's Office. It's being held in  
20 New York and London, and some other locations of SeeCubic of  
21 Delaware.

22 Q Did Stream TV have customers who were supposed to see the  
23 phone and the tablet?

24 A Post-bankruptcy, yes. We had customers who were supposed  
25 to see the phone and the tablet.



1 Q Do have customers who wanted to see the AKTV?

2 A Stream TV and technically we have customers who requested  
3 to see the AKTV.

4 Q How many customers after the Delaware Supreme Court ruling  
5 were you supposed to show the phone tablet and AKTVs to, and  
6 never did because SeeCubic was holding it?

7 A At least 50 possibly more --

8 MR. COLBY: Objection, Your Honor. That misstates  
9 the testimony. At least for many of those devices, Mr. Rajan  
10 testified that they were at SeeCubic B.V, not SeeCubic, Inc.  
11 The questions was --

12 THE COURT: He said SeeCubic B.V.

13 MR. COLBY: The most recent question said, SeeCubic  
14 without identifying, which.

15 THE COURT: Well, then objection, please clarify,  
16 which SeeCubic?

17 MR. COLBY: Vague.

18 THE COURT: Okay. Which SeeCubic?

19 THE WITNESS: The phone and tablet are at the B.V.,  
20 is my understanding, and I think one phone is at SeeCubic,  
21 London. Then the AKTVs are in the Netherlands, and also  
22 they're also in the Jersey Island and Hawk's offices as well as  
23 New York and London, and I believe India, some of other  
24 SeeCubic Delaware's offices.

25 BY MR. KODOSKY:

1 Q Was BOE one of the customers that -- you mentioned there  
2 were over 50 customers that wanted to see --

3 A Yes. BOE is one of the customers who was, and also our  
4 supply chain financier, who was supposed to see the AK -- AKTV,  
5 but we were not able to present it because it's not being  
6 turned over.

7 Q Do you have investors who are supposed to see the phone  
8 and the tablet?

9 A Yes, we do.

10 Q Do you have investors who wanted to see the AKTV?

11 A Stream TV does have investors who want to see the AKTV.  
12 Correct.

13 Q Did any investors quit because you didn't show them the  
14 phone, tablet and AKTV?

15 A Yes. Some investors quit because the AKTVs and the phone  
16 and tablets were not turned over as expected.

17 Q How much hard cash did Stream TV get from VSI, and  
18 companies VSI was working with, since you lost in Chancery  
19 Court?

20 MR. COLBY: Objection, Your Honor. That --

21 THE WITNESS: Ten million hard cash.

22 THE COURT: Wait a minute. Objection.

23 MR. COLBY: I don't know the relevance. I mean, I  
24 know this is an issue we've addressed in the context of the  
25 Hawk motions, but what is the relevance to the TRO?

1 THE COURT: Counsel, relevance to the TRO?

2 MR. KODOSKY: To the extent that -- it goes to  
3 damages, Your Honor, the amount of money coming in, our  
4 loss.

5 THE COURT: Counsel, are you relying on the cases that  
6 say that potential damages and loss can be a basis for a TRO?  
7 Is that -- is that what we're talking about?

8 MR. KODOSKY: Yes, Your Honor.

9 MR. COLBY: Your Honor, I think if they can quantify  
10 the supposed damages by the amount of money from VSI, then it's  
11 not irreparable harm, it's reputable by payment of damages.

12 THE COURT: No Counsel, the cases say that when there  
13 are damages and you can save, well, the damages, perhaps, it's  
14 not that you can recover those specific, they're cases that  
15 talk about how you establish that. And you're right, if  
16 damages, if it's money, you can do by money, right? That's not  
17 a TRO, that's a money -- that's a money proposition. They are  
18 cases that talk about something different, that's what I was  
19 referring to.

20 I'll allow it for what it's worth, because counsel,  
21 what they're saying is that the way I read the cases, was that  
22 I have suffered damages, and they'll continue in the -- if you  
23 continue to violate, and they're usually in trademark patent  
24 cases where we've suffered this and we're going to continue in  
25 the future, we don't know how much, but we are going to, and

1 it's proof that we're going to be injured, not proof of  
2 specific dollar numbers. I think that's what he's trying to  
3 do. I'll allow it for that purpose.

4 MR. KODOSKY: Thank you, Your Honor.

5 BY MR. KODOSKY:

6 Q How much hard cash did Stream TV spend since the  
7 bankruptcy?

8 A So far we've spent over 2 million and we're going to have  
9 to spend a million in short order for the production, an  
10 additional million for the production right now.

11 Q What's the current situation in the Netherlands for  
12 resources?

13 A Currently right now the Netherlands is in very bad  
14 financial shape. The money that they requested, the B.V.  
15 requested, even though was not given to them, and they've got a  
16 huge amount of unpaid payroll taxes, they've also defaulted on  
17 almost \$60 million of debt to Stream TV.

18 Stream TV has a loan into the B.V., which we need to  
19 get repaid. That loan is in default over \$60 million, which  
20 we're collecting because we're trying to maximize the Debtor's  
21 estate, and that's another immediate concern. Now that  
22 Stastney is the Director, we don't know what's going to happen  
23 with the collection of our \$60 million.

24 MR. KODOSKY: Permission to approach, Your Honor?

25 (Counsel confer)

1 MR. KODOSKY: Permission to approach, Your Honor?

2 THE COURT: He shared. Hand it to the -- he'll mark  
3 them and we'll hand them out to the witness.

4 MR. KODOSKY: This is D-42.

5 THE COURT: Okay.

6 MR. KODOSKY: Thank you.

7 BY MR. KODOSKY:

8 Q Mr. Rajan, you've been handed what's been marked for  
9 identification as Exhibit D-42. Do you recognize this  
10 document?

11 A Yes, I do.

12 Q What is it? It is SeeCubic of Delaware, their website.

13 MR. COLBY: Your Honor, I, we'll see where this goes.  
14 I think based on the Court's, court's prior rulings regarding  
15 website's authentication may be an issue, and don't think  
16 that --

17 THE COURT: Right.

18 MR. COLBY: -- based upon --

19 THE COURT: I remember going through an exhaustive --

20 MR. COLBY: Yeah.

21 THE COURT: -- review of what websites. I think  
22 there was a Third Circuit case that I relied on, or maybe it  
23 was a District Court, Third Circuit case that talked about the  
24 reliability of websites, and there was a four-part test, I  
25 think. I've looked at so many issues, I think there was a

1 four-part test that I needed to look at and figure out.

2 I think that that issue, I'd said we weren't going to  
3 -- I think it might've been the Chinese website with respect to  
4 their location --

5 MR. COLBY: Right.

6 THE COURT: -- with respect to their address. I  
7 think that based on the issues given where it was, that it  
8 could not be -- reliability was an issue. I'll listen to the  
9 questions and I'll apply the same test.

10 MR. COLBY: That that's all we're seeking.

11 THE COURT: Right. Which I don't -- as I said, I  
12 don't recall the name of the case, but I know I looked at it  
13 and read it --

14 MR. COLBY: Yeah.

15 THE COURT: And came to some conclusion.

16 MR. COLBY: I don't think it hinged on whether it was  
17 a domestic or a Chinese would say.

18 THE COURT: No. But one of the thing was  
19 reliability.

20 MR. COLBY: Right.

21 THE COURT: And one of the things that factored into  
22 my issue of reliability was in China.

23 MR. COLBY: Right. So, and I'm not saying that there  
24 isn't a witness who exists who couldn't authenticate this. I  
25 think, based upon your prior rulings, I would object that

1 Mr. Rajan could, but we'll --

2 THE COURT: Right.

3 MR. COLBY: -- see where it goes.

4 THE COURT: Well, we will see where it goes. Okay.

5 Let's go, Mr. Dombroski (sic), let's see what we have.

6 BY MR. KODOSKY:

7 Q Mr. Rajan, I was going to ask you to direct your  
8 attention to the executive profiles --

9 A Yes.

10 Q -- portion of this, and whether or not there are any  
11 SeeCubic B.V. employees that are, that you are able to  
12 identify.

13 MR. COLBY: Objection, Your Honor, we've --

14 BY MR. KODOSKY:

15 Q There are several.

16 MR. COLBY: Objection, Your Honor, we've --  
17 objection, Your Honor, we've now jumped right to apparently the  
18 substance of what Mr. Kodosky wants to ask about without  
19 clearing any of those initial hurdles that the Court laid out  
20 when we previously addressed this issue.

21 THE COURT: All right. So he's saying that before  
22 you can even ask him questions about this document, you have to  
23 meet, I guess authenticity, or you have to do something with  
24 the document to either authenticate it, get it in under some  
25 exception, because this is hearsay. This is something that you

1 want to admit for the truth of the matter, and it's an out of  
2 court, but namely, it's a website; and so how do you get that  
3 in?

4 And I don't recall -- what was the name of the case?  
5 Can you look that name up? I know I -- it was -- we took a  
6 break and I know that I spent some time researching that issue,  
7 because it was a rather important issue with respect to, I  
8 think it was Hawks. I think -- well, I don't know if it was  
9 you, Mr. Colby or Mr. Caponi who was trying to introduce it; I  
10 don't remember.

11 All right. So Counsel, he says, you need to lay a  
12 foundation to get this in and on what basis, because it's  
13 hearsay.

14 MR. KODOSKY: It's a statement by a party opponent,  
15 Your Honor, this is their website. This is the SeeCubic, Inc.  
16 SeeCubic of Delaware website.

17 MR. COLBY: A couple of things, Your Honor, appears  
18 to have been modified with some text added to the bottom of the  
19 page. But more importantly --

20 THE COURT: What text was added to what? That  
21 circled portion?

22 MR. COLBY: No, this www.seecubic.com website, page  
23 one.

24 MR. KODOSKY: We just printed it, Your Honor. We  
25 didn't --



1 MR. COLBY: Okay.

2 MR. KODOSKY: We didn't add any text.

3 MR. COLBY: I just -- this is why authenticity is an  
4 issue, and -- and so this isn't a hill I'm going to die on, I  
5 think there is a witness who could talk about this. I don't  
6 think it's Mr. Rajan, but also, I don't think that this -- the  
7 objection I'm making now isn't purely a hearsay objection, it's  
8 just -- it's an authentication question. And that's what --  
9 those were the hoops that we were forced to jump through --

10 THE COURT: Right.

11 MR. COLBY: -- previously.

12 THE COURT: And then how do you -- well, the question  
13 is --

14 MR. COLBY: It may have been --

15 THE COURT: Wait a minute.

16 MR. COLBY: Sorry, Your Honor.

17 THE COURT: You may try to authenticate it, I don't  
18 even know who printed it for you, Mr. Colby, you just said,  
19 here it is. I had no testimony as to how -- if somebody said,  
20 I went on the website, I searched, this is what I got. This  
21 is, I didn't have any of that from you, all I had was here it  
22 is. So I think they can lay a foundation to tell me what they  
23 did, how they got it. I don't know if that meets through  
24 hoops, but it was a little bit different than what you're --

25 MR. COLBY: And that -- but that's why I'm objecting.

1 Mr. Kodosky just went to asking about all that.

2 THE COURT: Oh, I get it. I get it. He has to lay a  
3 foundation first, like any other document.

4 BY MR. KODOSKY:

5 Q Mr. Rajan did you have any involvement with print out of  
6 this document?

7 A Yes. Yes. I was involved in the printout.

8 Q Tell me where -- tell us where you've -- where you  
9 obtained this document?

10 A When the -- it happened in two parts. One was when the  
11 Delaware Court receiver resigned when we filed bankruptcy and  
12 turned things over to me. In that transition it was clear, you  
13 know, my new role that the SeeCubic B.V. people were heavily  
14 involved in SeeCubic of Delaware, and then in my role as the  
15 CEO in the Netherlands, and as Director, they were integrated  
16 into SeeCubic of Delaware, and several of the employees of the  
17 Netherlands were being promoted to investors and customers as  
18 employees of the Delaware, almost as one company.

19 MR. COLBY: Your Honor. Sorry to be a stickler for  
20 detail, but --

21 THE COURT: That didn't answer the foundation.

22 MR. COLBY: It didn't answer the foundation question.  
23 We also, we just pulled up the website and if you hit print and  
24 you get the image of what the printed out page is going to look  
25 like, it doesn't have this seecubic.com website, page one.

1 I've never seen anything like that.

2 The pagination doesn't match, the actual pages that  
3 are also on the document, which say 1 of 2, 2 of 2, and then 1  
4 of 2, 2 of 2, it appears to be a compilation of several sub-  
5 pages from that domain. There's just a lot of questions here  
6 that Mr. Rajan didn't answer.

7 THE COURT: Okay. Counsel --

8 MR. COLBY: Counsel said they didn't add that, but it  
9 doesn't -- it doesn't make sense.

10 THE COURT: Well, the whole point of the matter is he  
11 didn't answer how he got it.

12 MR. COLBY: Right.

13 THE COURT: He just talked about what it, what -- the  
14 employees and who they were. He went straight to the testimony  
15 that you were objecting to, that he was relying on the document  
16 and testifying from his own memory.

17 MR. KODOSKY: Right.

18 THE COURT: All right.

19 BY MR. KODOSKY:

20 Q How did you get the --

21 MR. KODOSKY: Can I ask a follow up question, Your  
22 Honor?

23 THE COURT: Sure.

24 BY MR. KODOSKY:

25 Q Where did you -- how did you get this particular document?

1 A You type in www.seecubic.com and then you print it on the  
2 computer.

3 Q Thank you.

4 MR. KODOSKY: Move for the admission of this  
5 document, Your Honor?

6 THE COURT: So that he went in, he put in SeeCubic  
7 and then this is what he got, and he printed it out? So it  
8 says,

9 "Printout for a website do not bear the indicia of  
10 reliability demanded from other self-authenticating  
11 documents. To be authenticated some statement, or  
12 affidavits from someone with knowledge is required."

13 So what does that mean? So it says -- so how do you  
14 properly authenticate? I think that was what it says, and then  
15 I think it told me how you did that.

16 MR. COLBY: Facially, Your Honor, not only does the  
17 pagination not match what to our eye appears to have been added  
18 on the bottom, but if you notice at the top there are date and  
19 timestamps that come from different times --

20 THE COURT: Well, it would be --

21 MR. COLBY: -- 10:00, 12:00, 5:25 --

22 THE COURT: -- when you print it -- well, Counsel, if  
23 I go and print from my office, it's going to tell me at the top  
24 when I printed it.

25 MR. COLBY: Yeah.

1 THE COURT: It's not going to tell me -- because this  
2 says, look, who's talking about us HuffPost, Yahoo Finance, and  
3 then down at the bottom is H -- you know, the typical, I don't  
4 know what the stuff at the W, the page, the website, page 1, 2,  
5 3, 4, 5. I don't know if somebody added that.

6 MR. COLBY: Yeah. And also at the --

7 THE COURT: Or I don't know --

8 MR. COLBY: -- the timestamps at the top are at 5:25,  
9 2:13, so they're out of chronological order from when they were  
10 well printed.

11 THE COURT: Well, one says -- well, no it's --

12 MR. COLBY: 5:30.

13 THE COURT: -- 5:25, 5:25, 5:27 of -- and then  
14 another one, which is a different page is on 2:13, 2:13 and  
15 5:30, and then 5:30. So apparently some of this was printed on  
16 different days at different times.

17 MR. COLBY: The same day, I think, but different  
18 times by a couple of hours. And again, it doesn't explain  
19 this --

20 THE COURT: Well, this was 10/12, at 5:23, 10/12 --

21 MR. COLBY: It's all 10/12.

22 THE COURT: Yeah. They're all on 10/12, and they  
23 were printed at different times. Okay. And you're saying that  
24 this isn't -- they're not self-authenticating, so somebody has  
25 to authenticate them. And I think what I went through is how

1 did you authenticate them?

2 MR. COLBY: Yeah. And this thing on the bottom  
3 doesn't appear to be original to the website.

4 THE COURT: I don't know if it is or isn't. You're  
5 going to have to tell me why it isn't, because You're going to  
6 say, here it is. Here's what it is. How do I know? And just  
7 because you say it doesn't -- none of what you guys say,  
8 because you -- my favorite line to my kids, just because you  
9 say it doesn't make it so; I love that line. So --

10 MR. COLBY: Well, I guess that's the fundamental  
11 basis of our objection. What we heard from Mr. Rajan is, yeah,  
12 yeah, I printed it out, and there's unanswered questions that  
13 that don't seem to be --

14 THE COURT: Okay. So let's see what it says. How do  
15 you -- because the issue there was not even, it had to do with  
16 a non-compete. The issue that, the case in question, which is  
17 Victaulic Company v. Tieman, and actually it wasn't -- it was  
18 out of the -- it's 499 F.3d 227, 2007, and it's an opinion from  
19 Judge Ambro. It's a classic case of jumping the gun, and it  
20 was a covenant not to compete, but that's a whole different  
21 issue.

22 But in any event a court talked about -- and  
23 significant for me was the issue of the website and how you  
24 authenticate it, because it's not a self-authenticating  
25 document under the exceptions to, I guess, self-authenticating

1 documents aren't hearsay.

2           So it says in that case, the question was -- and in  
3 that case, they were asking the Court to take judicial notice.  
4 This is a little bit different, because they're not asking me  
5 to take judicial notice for something to be admitted, and it  
6 had to do with, and I think that's what you guys were -- we  
7 were focusing on, is whether it can be self-authenticated, such  
8 that I could take judicial notice. It didn't tell me.

9           It says in order for me to take judicial notice,  
10 there was some additional steps that needed to be taken,  
11 because they weren't self-authenticating. So my question is,  
12 we are, we're in a different process now. They're not trying  
13 to ask me to take judicial notice, and they're not arguing  
14 self-authentication.

15           So how do we -- this is a document. So you have to  
16 meet the regular rules for how do you get this document in  
17 here? And I don't know, they didn't create it, you need to  
18 tell me how --

19           MR. COLBY: How, I really --

20           THE COURT: -- how it gets in you.

21           MR. COLBY: I really -- I don't mean to make a  
22 mountain out of a mole hill, I just want to make sure we're  
23 respecting the same evidentiary rigors that we were subjected  
24 to a few weeks ago.

25           THE COURT: Well, what -- but what I'm saying is that

1 the rigors that you went through is because you asked me to  
2 take judicial notice of it. That's a whole different -- a  
3 different standard that I have to look at. And it was a --  
4 whether it was judicial notice, it has to be self-  
5 authenticating.

6 MR. COLBY: Uh-huh.

7 THE COURT: And they're saying websites are not, you  
8 need to authenticate it in a different way. My point today is  
9 that no one's asking me to do judicial notice. They're asking  
10 me -- he wants to ask him to authenticate this. So I think at  
11 this point, it's the same regular rules as how do you  
12 authenticate the document?

13 So that's why I'm glad I looked at this case because  
14 that was judicial notice. This is, how does he authenticate  
15 it, and I don't know if he can.

16 MR. COLBY: All we ask is that they make an effort.  
17 Thank you.

18 THE COURT: Right. All right. How do -- you need to  
19 authenticate this document; how do you do that? Because it's  
20 not judicial notice, I can't take that.

21 MR. KODOSKY: It's not judicial notice, but it's a  
22 statement by a party opponent. It's an admission, it's their  
23 website.

24 THE COURT: Well, that question is, how do you now  
25 it's our website?



1 MR. KODOSKY: And it's also not hearsay. It's not  
2 being offered to prove the truth of the matter asserted.

3 THE COURT: Well, you just thought it did by asking  
4 them something about the employees being the same. That would  
5 definitely be for the truth of the matter. I mean, you can  
6 probably get there without this dang-gon document, but I can't  
7 tell you, and I'm, you know, sometimes when I get a little  
8 frustrated, I tend to take over and that's not my role.

9 All right. Go ahead. With respect to how do you --  
10 you're going to need to lay a foundation for this document?

11 BY MR. KODOSKY:

12 Q Did you have any involvement in printing this document out  
13 from the internet?

14 A Yes. I printed it out, and I printed it out, and I also  
15 did due diligence earlier on the involvement of the B.V.  
16 employees vis-a-vis the --

17 THE COURT: Wait a minute --

18 THE WITNESS: -- website.

19 THE COURT: Wait a minute. Let's just stick right  
20 now to the document itself. We're trying to authenticate the  
21 document, and what do you need to do? We don't need to hear  
22 about all the other people. He can testify about that without  
23 this website. But right now we need to focus on authenticating  
24 the document that you want to introduce into evidence.

25 And it's the same as any other document when you need

1 to authenticate it. You need to do something, lay a  
2 foundation, something, to get it into the record. You said  
3 that he printed it out and the process that he went through to  
4 get it to print out, what did he do?

5 THE WITNESS: I typed in seecubic.com into the  
6 computer, and the website is the same website that is on other  
7 documents that we have received for SeeCubic, where they have  
8 referred to the URL as their website, and printed it out. And  
9 they've mentioned the website in numerous documents that we've  
10 received and had numerous dealings with SeeCubic for the last  
11 few years. So we are -- we've confirmed numerous times that  
12 this is their website, and we're also the owner of this URL,  
13 Seecubic.com. Stream TV is.

14 THE COURT: So --

15 MR. COLBY: Your Honor, I don't believe Mr. Rajan has  
16 established that SeeCubic, Inc. of Delaware controls this  
17 domain as opposed to SeeCubic B.V. And I think he also, I'm  
18 not sure it could be used as a statement by a party opponent if  
19 he just said they own the domain.

20 THE COURT: Well, he said they owned it. So I need  
21 some -- this says SeeCubic Company, and I don't know what  
22 SeeCubic Company this is. Okay. Do you want to ask him some  
23 further questions, Counsel?

24 (Counsel confer)

25 BY MR. KODOSKY:

1 Q Mr. Rajan, do you know if -- are you familiar with  
2 SeeCubic's LinkedIn page?

3 A Yes, I am.

4 THE COURT: What SeeCubic are we talking about? We  
5 need to be precise. Because, I mean, I'm about to ask the  
6 questions myself and I hate doing that because then that's not  
7 my job, but I'm getting a little frustrated here.

8 BY MR. KODOSKY:

9 Q SeeCubic of Delaware?

10 A Yes. I'm familiar with SeeCubic Delaware's LinkedIn page  
11 and their website.

12 Q Are you familiar with a button on the LinkedIn page that  
13 takes you to this website?

14 A Yes, I am.

15 Q And you've got personal knowledge of that?

16 A Yes, I have. Yes. I have that because they're -- some of  
17 their employees are on my LinkedIn page, and they still wish me  
18 happy birthday and stuff like that.

19 MR. KODOSKY: Your Honor, we move the admission of  
20 Exhibit D.

21 MR. COLBY: Objection, Your Honor. They've laid no  
22 foundation as to who or what controls a SeeCubic LinkedIn page.  
23 It's the same issue with respect to this document, but one step  
24 removed.

25 THE COURT: Okay.

1 MR. COLBY: And whether or not it links doesn't  
2 establish the control issues that I raised a minute ago with  
3 respect to this document, it can link to anything.

4 MR. KODOSKY: Again, Your Honor, this isn't a  
5 judicial notice question. We're moving to have this admitted  
6 as a statement, or an admission by a party opponent.

7 THE COURT: Which party? Because it says SeeCubic.  
8 I don't know which SeeCubic we're talking about.

9 MR. KODOSKY: SeeCubic, Inc., Your Honor.

10 THE COURT: What is this seecubic.com. Okay. Does  
11 it just says SeeCubic --

12 MR. KODOSKY: Mr. Stastney, their leadership team is  
13 described here. Executive profile, CEO, Chairman of the Board,  
14 Chad Stastney. The first picture you see they're smiling at us  
15 under executive profiles.

16 THE COURT: Okay.

17 MR. KODOSKY: Mr. Rajan's picture isn't on here.

18 THE COURT: Wait a minute. Wait a minute. Wait a  
19 minute. And I get his picture's not on there. Okay. So what  
20 he's saying to me, Mr. Colby, is, Mr. Rajan did research, went  
21 on the internet, put in SeeCubic, Inc. SeeCubic, I don't know  
22 if he put in Inc. or what, and this is what came up for  
23 SeeCubic and on -- and this was part and parcel of what's on  
24 the website.

25 And so the question -- and he printed out what he saw

1 on the website, and based on that they believe that that is  
2 sufficient information to have this document authenticated as  
3 to what he printed out from the SeeCubic website. which  
4 SeeCubic. I don't know.

5 MR. COLBY: Correct, Your Honor. And Mr. Rajan just  
6 testified that Stream TV owns this domain. So --

7 THE COURT: Well, then if they own the domain, he can  
8 testify his domain, I went in there and I printed -- you don't  
9 want to go down that road.

10 MR. COLBY: Well, then --

11 THE COURT: You don't want to go down there --

12 MR. COLBY: -- it's not a statement by a party --

13 THE COURT: No, then it's his records.

14 MR. COLBY: Sure. I mean --

15 THE COURT: Then now we're going down the road of  
16 it's his records, we on the website, I went on there and I  
17 printed it out.

18 MR. COLBY: Well, then, if it's his records, Your  
19 Honor, then it doesn't shed much light on --

20 THE COURT: Maybe it does, maybe it doesn't, I don't  
21 know.

22 MR. COLBY: On, you know, the TRO issues.

23 THE COURT: Oh, okay. Here we go.

24 MR. COLBY: So --

25 THE COURT: Let me see how we authenticate a website.

1 Boy, I don't have 50 associates at my hand, but I have some  
2 good law clerks. Okay. Oh, look at that. It says,  
3 "Few courts have considered how a website printout or  
4 block posting may be authenticated. Those that have  
5 considered the issues have found that website  
6 printouts are sufficiently authenticated, where the  
7 proponent declared that they were true and correct  
8 copies of the page on the internet, and that the  
9 printouts included their page URL address and the  
10 dates printed."  
11 And they said the exhibits in that case -- and this  
12 is a case of Randazza vs. Cox, which is out of the District of  
13 Nevada. Now none of that is obviously binding on me. This is  
14 another one, In re Terrorist Attack on September 11, 2001, and  
15 this one says, and this one is out of the Southern District of  
16 New York. And it says,  
17 "A finding that a printout of a website was more  
18 likely to be authenticated where it remains  
19 accessible to the public website as of the writing of  
20 the opinion as the Court has verified."  
21 Okay. And none of the cases undermine that. So  
22 apparently to authenticate a website the person has to be able  
23 to say that, and you're telling me that it remains Mr. Colby,  
24 because you just went on there, and said that there's a  
25 website. What's the URL website that you were on? Is it

1 different from this one?

2 MR. COLBY: No, it's the seecubic.com, but it doesn't  
3 have --

4 THE COURT: But, Counsel --

5 MR. COLBY: -- this note on there, so --

6 THE COURT: Okay. But then all the person has to  
7 tell me is that that they -- let's see. It says all they have  
8 to contain -- the printout has to have URL, and that it was you  
9 know, they printed, it's on the, it's on the internet. It has  
10 the URL on it, and that's sufficient.

11 So I'm not quite sure how it doesn't -- at least  
12 according to these cases, meets the requirements for  
13 authentication. You are saying that the printout, if you go on  
14 the website, doesn't have website page one? I'm pretty sure it  
15 probably doesn't, but do we know if you print it out --

16 MR. COLBY: Yes, you --

17 THE COURT: Does it have that? At the bottom it says  
18 HTPCS www.seecubicinc.com Company. So we have a URL, and if you  
19 put that -- take aside from this other, like striking the  
20 little page numbers, everything else has a URL on it, and it  
21 was printed, seems to me the date printed was 10/12/25 -- 23 of  
22 5/25. So these different pages meet the requirement, at least  
23 with respect to the date printed, and the URL number. You  
24 know, I don't know what this other -- if that was because of  
25 what came out when it was printed.

1 But with respect to the -- everything in between  
2 there, in between the date and the URL, seems to me the  
3 definitions at least from, you know, I guess this is like no  
4 circuit court, because they're saying few courts have addressed  
5 it. And so actually I have three cases. I have, wait, one  
6 from Delaware, one from Nevada, one from Southern District of  
7 New York. And let me see, hold on. Oh, that's my other --  
8 that's my judicial notice case.

9 So it seems to me, based on these two courts'  
10 discussion on how you authenticate, they've met that by saying,  
11 I went on the website, I printed it out, that's the URL and  
12 this is the date. Counsel I get -- I don't know how the  
13 printout and you, I can't say that when it prints out it  
14 doesn't tell you website page one. I don't know. But  
15 Mr. Rajan's testimony is that that's how it came out when he  
16 printed it?

17 MR. COLBY: Yeah. I don't -- I don't know that he  
18 was specifically asked about that footer, but I think I've  
19 stated my objection. I understand the Court's --

20 THE COURT: Overruled.

21 MR. COLBY: -- likely to rule --

22 THE COURT: Because, Counsel the guidance that I'm --  
23 as again, I don't have a circuit court, I don't even have a  
24 district court here, and this is more persuasive. I, you know,  
25 if there's another court who's addressed the issue, I am not



1 about to try to go and write an opinion on that. I will take  
2 what those courts have said. So counsel, I believe you've  
3 authenticated --

4 MR. KODOSKY: Thank you.

5 THE COURT: -- the website.

6 MR. KODOSKY: Thank you, Your Honor.

7 BY MR. KODOSKY:

8 Q Mr. Rajan there's a few things on this printout that I'm  
9 going to ask you about, including, I want to direct your  
10 attention to page 10, offices and contact information?

11 A Correct.

12 Q Whose offices and contact information are listed here?

13 A These are the offices of SeeCubic of Delaware in New York  
14 and London, and they're claiming the Eindhoven --

15 THE COURT: Okay. Where are we at?

16 THE WITNESS: I'm sorry, Your Honor, page 10.

17 MR. KODOSKY: Page 10.

18 THE COURT: Wait a minute, I have --

19 MR. KODOSKY: Website page 10 at the bottom.

20 THE COURT: I only have 8 pages.

21 MR. KODOSKY: Your Honor, this --

22 THE COURT: I don't have -- I only have eight pages.

23 How many pages do you have, Mr. Colby?

24 MR. COLBY: Well, according to what I believe to be  
25 the added page numbers, we have 10.

1 THE COURT: Counsel, okay. Page 7 --

2 MR. COLBY: Sorry, take that back we have 11.

3 THE COURT: Well, I have 8.

4 MR. COLBY: Right.

5 THE COURT: The last page I have says, Dr. Bart  
6 Barenbrug, Ph.D.

7 MR. KODOSKY: I can -- I can swap.

8 THE COURT: All right. Make sure Mr. Colby has the  
9 same thing. All right.

10 MR. KODOSKY: It's 11 pages.

11 THE COURT: All right. Can somebody give me the  
12 correct -- here, John, take this back. All right. Does the  
13 one Mr. Rajan have 11 pages?

14 MR. KODOSKY: I does, Your Honor.

15 THE WITNESS: Yeah. Yes, it does.

16 THE COURT: Okay. So we go on to page 10?

17 MR. KODOSKY: Yes, Your Honor.

18 THE COURT: All right. Page 10. Hold on. Page 10,  
19 Exhibit 42. Okay. All right.

20 BY MR. KODOSKY:

21 Q Whose offices and contact information is shown on page 10?

22 A These are the offices of SeeCubic of Delaware and New York  
23 and London, and they're claiming the Eindhoven SeeCubic B.V. as  
24 one of their offices.

25 Q I'm sorry, I missed that last --

1 A The Eindhoven one is in the Netherlands. They're claiming  
2 the SeeCubic B.V. as one of SeeCubic Delaware's offices.

3 Q They're mixing up the SeeCubic --

4 A They're -- they're, they're saying it's integrated. Yeah.  
5 They're basically inferring that it's integrated.

6 Q And same questions with respect to the leaders, the  
7 executive profiles that began on page 4.

8 A Yes.

9 Q First question. Do you recognize any former Stream TV  
10 employees that are shown amongst the executive profiles for  
11 SeeCubic, Inc.?

12 A There are a number of former Stream TV employees and  
13 number of current Stream TV employees on this website. The  
14 people in the Netherlands are listed on the website of  
15 SeeCubic, a Delaware. If you go here on page 4, down at the  
16 bottom where it has Sheeba Rajesh, Dr. Bart Barenbru,  
17 Andy James is a Netherlands employee, and so is Bram Riemens,  
18 and then Patrick Theune --

19 THE COURT: Wait a minute, one at a time.

20 THE WITNESS: Sorry.

21 THE COURT: The first one you said was Sheeba Rajesh.

22 THE WITNESS: Rajesh, right here.

23 THE COURT: Okay. What is she, what's --

24 THE WITNESS: She is listed as a Senior Vice  
25 President of Science --

1 THE COURT: And she is --

2 THE WITNESS: -- for SeeCubic of Delaware. She has  
3 a --

4 THE COURT: And she has what, with respect to some  
5 other company?

6 THE WITNESS: She works in the Netherlands for a  
7 stream subsidiary called SeeCubic B.V.

8 THE COURT: Okay. So she works for SeeCubic B.V.  
9 All right.

10 THE WITNESS: But she's being listed in SeeCubic --

11 THE COURT: I get it Mr. Rajan. Next?

12 THE WITNESS: Then they're listing Patrick Theune as  
13 the head of technology for all of SeeCubic of Delaware. He  
14 works in SeeCubic B.V. in the Netherlands, a Stream TV  
15 subsidiary. Then Dr. Bart Barenbrug is listed as a Senior Vice  
16 President of Research and Development at SeeCubic of Delaware,  
17 but he works in SeeCubic B.V., which is a Stream TV subsidiary.

18 Then Andy James is listed as Vice President of  
19 Industrialization Manufacturing, on page 5. He is a SeeCubic  
20 of the Netherland's employee, and he's listed on SeeCubic of  
21 Delaware as their Vice President of industrialization.

22 Then Bram Riemens is a Senior Executive Advisor,  
23 system architecture listed. He works in the Netherlands for  
24 Stream, you know, Stream TV subsidiary, but he's being listed  
25 as that title in SeeCubic of Delaware.

1 BY MR. KODOSKY:

2 Q What effect is this having by co-mingling the Stream, the  
3 SCVB employees with the SeeCubic employees on the SeeCubic  
4 website; what impact is that having on the marketplace?

5 A Well, it's having two major impacts. When I did my due  
6 diligence on this, they're shifting -- SeeCubic of Delaware is  
7 shifting customers and investment to -- away from the Debtor to  
8 another company, because the Debtor and the Debtor's assets are  
9 in the process of reorganizing right now. And money is being  
10 spent on the B.V., which Stream TV has to pay back, putting a  
11 burden on the Debtor's Estate, and this is continuing every  
12 day, and they're pulling things away and it's causing confusion  
13 in the marketplace.

14 Q Confusion in the marketplace is the thing that I was going  
15 to ask you about with respect to -- if you'll turn to page 6.

16 A Yes.

17 Q Would this, in your opinion, cause a reader of the website  
18 to believe that Patrick Theune, am I pronouncing that name  
19 correctly?

20 A Yes.

21 Q Has been -- well, it looks like it's got his bio there  
22 stating that he's been working, experience from working in  
23 research and development. Would this cause a reader to believe  
24 that this head of technology was an employee of SeeCubic, Inc.?

25 MR. COLBY: Objection. Objection, Your Honor, as for

1 Mr. Rajan to speculate about what a generic unidentified reader  
2 may think.

3 THE COURT: Counsel.

4 BY MR. KODOSKY:

5 | Q     What does it cause you to think?

6 A At, in my role, both at Stream TV, and I was the head of  
7 SeeCubic Netherlands, in my discussions with them, I asked  
8 them, where are you working, are you working in the  
9 Netherlands, or are you working for Delaware, and you're being  
10 integrated as an employee of the Delaware --

11 MR. COLBY: Move to strike.

12 THE WITNESS: And that's the way --

13 MR. COLBY: -- Your Honor.

14 THE COURT: All right.

15 MR. COLBY: I was trying not to interrupt.

16 THE COURT: All right. The question is, what did it  
17 cause you to think? We don't need to know about your  
18 discussions with people outside of court? What, looking at  
19 this, what did it cause you to think?

20 THE WITNESS: My first -- my first reaction was they  
21 left our subsidiary and went to work for a competitor.

22 THE COURT: Okay.

23 BY MR. KODOSKY:

24 Q Page 7. Do you see the bio for Dr. Sheeba, am I  
25 pronouncing her name correctly, Rajesh?

1 A Rajesh.

2 Q Rajesh, Ph.D.?

3 A Correct.

4 Q Is she employed by SeeCubic, Inc.

5 A No.

6 Q SeeCubic of Delaware?

7 A No.

8 Q Who is she employed by?

9 A SeeCubic of the Netherlands.

10 Q Which is a Stream subsidiary?

11 A It is a Stream subsidiary.

12 Q And this bio is saying, do you see where it says

13 responsible for all the optics division activities of the

14 company?

15 A Correct.

16 Q In the field of autostereoscopic display technology. Am I

17 reading that correctly?

18 A That is correct.

19 Q Does SeeCubic, Inc., or SeeCubic of Delaware even have an

20 optics division?

21 A No.

22 Q Does SeeCubic, Inc., or SeeCubic of Delaware employ any

23 physicists with specialization in optics and photonics?

24 A No.

25 Q As a competitor to Stream TV, how is this impacting Stream

1 TV?

2 A It's causing a huge problem for both customers and  
3 investors, and also both new investors and people who have  
4 given money here for the bankruptcy, as to why our employees  
5 are being promoted to investors and companies, after we filed  
6 the bankruptcy, and after we won in the Supreme Court.

7 Q And this bio goes on to state that she's keen to interact  
8 with customers, suppliers, and partners. If Dr. Sheeba Rajesh,  
9 Senior Vice President of Science for SCBV is being held out on  
10 SeeCubic Inc.'s website as being part of the leadership, I'm  
11 sorry, the executive leadership team for SeeCubic, Inc., how is  
12 that impacting Stream TV?

13 A It's having a massive impact for both customers and  
14 investors, and you know, and we have you know, we have  
15 contracts in place with all the various parties and, you know,  
16 it's -- it's, it's a gigantic problem and it continues every  
17 day, right now.

18 Q If you turn to page 8, just briefly, the bio for Dr. Bart  
19 Barenbrug, Ph.D.

20 THE COURT: Wait a minute, counsel, I got to get  
21 another page.

22 THE WITNESS: Yeah.

23 BY MR. KODOSKY:

24 Q Do you see where Doctor --

25 THE COURT: Wait a minute, Counsel.



1 MR. KODOSKY: I'm sorry, Your Honor.

2 THE COURT: I'm not there yet.

3 MR. KODOSKY: Sorry.

4 THE COURT: Go ahead.

5 BY MR. KODOSKY:

6 Q Do you see on page 8, the bio for Dr. Bart Barenbrug,  
7 Ph.D.?

8 A Yes, I do.

9 Q And he's described as Senior Vice President, Research and  
10 Development?

11 A Yes.

12 Q Again, does SeeCubic, Inc. have any research and  
13 development employees?

14 A No.

15 THE COURT: Which SeeCubic?

16 THE WITNESS: SeeCubic at Delaware.

17 MR. KODOSKY: Inc., of Delaware.

18 THE COURT: Any what what, research and development  
19 you asked?

20 MR. KODOSKY: This describes him as being a Senior  
21 Vice President Research and Development.

22 THE COURT: Okay.

23 BY MR. KODOSKY:

24 Q Halfway through that bio, do you see where it states that,  
25 "Culminating in the founding of SeeCubic and

1 Eindhoven in 2011, where he has worked since, leading  
2 a software team that works on a variety of topics  
3 ranging from content tools, conversion and rendering  
4 algorithms, implementing the latter for a variety of  
5 platforms."

6 Do you see that discussion?

7 A Yes.

8 Q And that's actually, truth be told, the work that he's  
9 done for Stream subsidiary SCVB, correct?

10 A Yes. This one is the most damaging because he's the  
11 inventor of the original formula. Stream TV has turned it into  
12 electronics, they did in software, we did it in hardware. But  
13 he's the original inventor of the formula. He was heavily  
14 involved with me at Stream TV. He's gone to investor meetings.  
15 We've flown in to meet with customers. Stream TV since we've  
16 been reorganizing the customers and some of the investors who  
17 are previously looking at the company, I've been asking him to  
18 get on the phone, but we have a huge problem because he's been  
19 co-opted by SeeCubic of Delaware.

20 THE COURT: All right. Leave the -- Mr. Rajan, just  
21 say he now works for them.

22 THE WITNESS: Okay.

23 THE COURT: Again, I'm trying, everybody, to just  
24 keep it generic.

25 THE WITNESS: Okay.

1 THE COURT: I get, I get it, but it doesn't advance  
2 the cause. Okay.

3 BY MR. KODOSKY:

4 Q The fourth line from the bottom of his bio where it states  
5 "In that work, he closely collaborates with mainly the optics  
6 and firmware teams to optimize the technology across the  
7 different parts of the solution." Does SeeCubic, Inc., or  
8 SeeCubic of Delaware, does it have an optics and firmware  
9 teams?

10 A No. He works with Sheeba Rajesh and Bram Riemens on the  
11 optics in the firmware, that work in the Netherlands.

12 Q And the next line, it says he has several patents to his  
13 name, both from the time at Philips and at SeeCubic. Do you  
14 see where I'm reading from?

15 A Yeah. His name I think is on all the patents that Stream  
16 TV paid for. I believe so.

17 Q Is this essentially leading the reader to believe that  
18 SeeCubic has patents, SeeCubic, Inc., or SeeCubic of Delaware  
19 have patents that they do not?

20 MR. COLBY: Objection, Your Honor --

21 THE WITNESS: Yes, it is.

22 MR. COLBY: -- to the extent of it is asking what  
23 the, -- I think the way the question was phrased, is it leading  
24 a reader to believe?

25 THE COURT: A reader to believe.

1 MR. COLBY: It's either about a reader, not Mr.  
2 Rajan. So it's inappropriate in that way, or it's asking  
3 some --

4 THE COURT: What is --

5 MR. COLBY: -- sort of intent question?

6 THE COURT: Or what does he -- what it leads him --  
7 once he reads this, what does he thinks it means?

8 MR. COLBY: Right. Thank you.

9 BY MR. KODOSKY:

10 Q What's your -- what's your --

11 A My impression that he's left our subsidiary and is working  
12 for another company, and may have -- the patents may have gone  
13 out of our company.

14 Q What impact does that have on Debtors and Debtors' estate?

15 A It has a dramatic impact on customers, and investors, and  
16 shareholders, and vendors, and suppliers, and also all the  
17 people that Bart has met with through Stream TV.

18 Q Why did you not give the specs earlier to the Netherlands?

19 A Because we were -- I was concerned that it was going to be  
20 shared with Shad Stastney and SeeCubic of Delaware by one of  
21 the employees. And some of the employees would've kept it  
22 confidential, but they were feeling extreme -- you know. in my  
23 role as CEO of the Netherlands, there was tremendous  
24 awkwardness because of you know, what was happening with  
25 SeeCubic of Delaware.

1 Q What is the cost of the Netherlands per month?

2 A Currently they are spending 750,000 euros a month, and  
3 they've been doing that for quite a while.

4 Q Is that because they're working on SeeCubic, Inc., or  
5 SeeCubic of Delaware projects?

6 A They are working on SeeCubic of Delaware projects, no  
7 Stream TV projects.

8 Q What is the proper cost of the Netherlands per month?

9 A Stream TV believes that the proper cost is only about a  
10 hundred thousand euros a month.

11 THE COURT: It's how much?

12 THE WITNESS: A hundred thousand Euros a month. And  
13 our concern is that that differential could have gone to the  
14 unsecured, it's now in the form of a loan that Stream TV has to  
15 pay back, which is a burden on tech, innovative and Stream TV's  
16 estate.

17 MR. KODOSKY: Permission to approach, Your Honor.

18 THE COURT: Sure.

19 MR. KODOSKY: This has previously been marked for  
20 identification as D-2.

21 THE COURT: We won't do it now. Hold on one second.  
22 Okay. All right. Counsel, go ahead.

23 MR. KODOSKY: And, Your Honor, I don't know if this  
24 has been moved. If we moved this into evidence. We had asked  
25 Mr. Stastney about this document, he recognized that.

1 THE COURT: Can you see John, if D-2 was admitted --

2 THE CLERK: Sure

3 MR. COLBY: It's already been admitted, I believe,  
4 correct?

5 MR. KODOSKY: That's what I'm not clear about.

6 THE CLERK: I have it on our list, but not circled.  
7 So I don't remember --

8 MR. COLBY: Oh.

9 THE CLERK: -- if it what's totally admitted or not.

10 MR. COLBY: Yeah. I guess he introduced it and  
11 discussed it, but it wasn't admitted.

12 MR. KODOSKY: Any objection?

13 MR. COLBY: I mean, if he'd authenticate it.

14 MR. KODOSKY: Mr. Stastney has already stated that he  
15 recognized it, whenever we ask some questions about it.

16 MR. COLBY: I'll state it for the record, Your Honor,  
17 I'll state a relevance objection, because it's from Q2, 2022.  
18 We're back to that. But I'll state that objection for the  
19 record and sit down.

20 THE COURT: Okay. All right. Go ahead Mr. Rajan --

21 MR. KODOSKY: Thank you, Your Honor.

22 BY MR. KODOSKY:

23 Q Mr. Rajan, have you ever seen this PPM before? Yes, I  
24 have. When did -- where did you see the PPM and when?

25 A I was -- this is the second time I was invited to a

1 meeting in New York to see if I wanted to personally invest in  
2 SeeCubic of Delaware. And this was handed to me by people  
3 representing SeeCubic of Delaware.

4 Q What did you do when you saw the PPM?

5 A Well one, I was surprised what was in it. It was in the  
6 winter of 2022 well after the SeeCubic -- I'm sorry, the  
7 supreme court ruling, and they were talking about sublicensing.  
8 They were talking about our employees. I immediately called  
9 the CEO of Rembrandt to let him know that they were clearly  
10 soliciting people saying that they're sublicensing, and they  
11 were planning to sublicense the technology, which puts us in  
12 risk with our IP licenses.

13 Q What action did Rembrandt take?

14 A Rembrandt filed a lawsuit against Technovative because  
15 there was a Receiver in at that time and they also sued  
16 SeeCubic and Shad Stastney. I did prevent them from filing a  
17 lawsuit against the Receiver for trade secret and IP and  
18 license violations.

19 Q I'm sorry you said SeeCubic. Are you referring to  
20 SeeCubic of Delaware?

21 A SeeCubic of Delaware and they sued Technovative. Sued  
22 Technovative. They sued Technovative because Technovative has  
23 control of the subsidiaries and Stream TV does.

24 Q What was the problem with Stream TV to cause this action?

25 A The problem was is that SeeCubic was, through this

1 document, soliciting investors saying that they were using a  
2 sublicense model, and this is the time when it was, you know,  
3 it was known to people in the industry that Phillips was  
4 beginning to sell their Patent's. And Rembrandt was dead set  
5 against sublicensing. And also, the technology was being  
6 misappropriated it appeared. And Stream TV employees were  
7 being passed off as SeeCubic employees and they were openly  
8 talking about licensing a number of items in here that violate  
9 the Rembrandt claims.

10           You know, if you go here to the sublicensing, when it  
11 goes to the revenue, it talks about the SeeCubic pros, the  
12 SeeCubic coder, the optical stack, and also, you know, the IP  
13 course. So we informed Rembrandt what was happening.

14 Q     Where was Rembrandt's technology used?

15 A     Rembrandt had four claims. One claim had to do with  
16 content that in all the devices, the automotive and the TV's  
17 and the gaming had to do with content. And that is what is at  
18 risk with these demo units such as the AK and the automotive,  
19 the trade secret. That is one of the Rembrandt claims is being  
20 leaked out because it's not secure.

21           Then in the TV's, there's three other claims that  
22 have to do with real time conversion and how to protect being  
23 able to see things like menus and others that's inside the TV  
24 product, which is in these various offices and being shown to  
25 various companies. You know, as my role it has the



1 Netherlands, it's a security risk having -- leaving the TV's  
2 behind. But they're being left behind in a wide range of  
3 locations.

4 MR. KODOSKY: Permission to approach, Your Honor?

5 THE COURT: You may.

6 MR. KODOSKY: If we didn't move this into evidence --

7 MR. COLBY: Can I see that again? That looks  
8 different.

9 MR. KODOSKY: -- at the last hearing, Your Honor. We  
10 would do so now.

11 MR. COLBY: Well, this is different then the one. It  
12 just doesn't have the address on the top. It's just a  
13 different document. Is this another Saturday night? This is  
14 another Saturday night document?

15 MR. KODOSKY: This is number six on our exhibit list.

16 THE COURT: Let's refrain from the Saturday night.  
17 This was D1 from the last hearing?

18 MR. COLBY: No. The document I have as D1 is  
19 different. The one I have as D1 it says on top valid October  
20 1, 2023 and it starts with issuer and size.

21 THE COURT: Well, that's what I have.

22 MR. COLBY: Yeah. This is -- what I was just shown  
23 was a different document.

24 THE COURT: Well, this is proposed terms for bridge  
25 loan valid October 1, 2023.

1 MR. COLBY: Yeah. That's not what I was just shown.

2 THE COURT: Oh. Well, that's what I have. He must

3 have gave you the wrong copy.

4 MR. COLBY: Well, I don't know which one we're

5 talking about.

6 THE COURT: Are we talking D1 or D4?

7 MR. KODOSKY: This is D4, Your Honor.

8 THE COURT: Well, I have D1.

9 MR. KODOSKY: You have --

10 THE COURT: Dated October 1st, 2023. SeeCubic up to

11 \$5 million.

12 MR. KODOSKY: Let me take this back.

13 THE COURT: Take it back and I don't know what we're

14 doing.

15 MR. COLBY: Okay. I've got a bunch of pages. Some

16 look the same. Some don't. The pagination doesn't make sense.

17 THE COURT: Why don't we take a little bit of break

18 because I'm starting to get a little queasy here. I need to

19 get some medicine. All right. We need a ten-minute break.

20 We'll come back at 5:00.

21 I mean, are we going to -- I want to try to finish

22 tonight. And I'm sure by the time we finish the good old

23 demonstration will be over and we go until 7:00. I don't want

24 to go past 7:00. I don't know if I can. I'm going to go see

25 if I can. But can we wrap this up by 7:00? I don't want to

1 have to come back here because then we're going to have to have  
2 everybody's schedule. And, I mean, it's up to you. I would  
3 like to get it done today, and I thought we would if we didn't  
4 waste -- on issues. But how much longer do you think you have  
5 for Mister --

6 MR. KODOSKY: I'd say 30 to 45 minutes, Your Honor.

7 THE COURT: And Mister -- you probably need an hour,  
8 hour-and-a --

9 MR. COLBY: Yeah. I've got some cross obviously.  
10 And then there's a good chance we'll have to recall Mr.  
11 Stastney. You know my position that there's a whole bunch of  
12 new facts that --

13 THE COURT: So we're going to be past 7:00? So  
14 counsel, I think what we may have to do is wrap up Mr. Rajan's  
15 direct and then get another date. There's no way we're going  
16 to finish this by 7:00 o'clock. There's just no way. And I  
17 don't want to stay here past then. I mean, I have been known  
18 to go to 10:00-11:00. But this, I'm not doing that. Not  
19 today. So how about we take a recess, come back at 5:00  
20 o'clock? You can get your exhibits together and I can go get  
21 something for my nausea. So court is in recess until 5:00  
22 o'clock.

23 MR. KODOSKY: Thank you, Your Honor.

24 (Recess taken)

25 THE BAILIFF: All rise.

1 THE COURT: Please be seated. Counsel, you may  
2 proceed.

3 MR. KODOSKY: Mr. Rajan, you've been handed what has  
4 previously been marked as Exhibit D1, which we move into  
5 evidence, Your Honor. Do you have any objection?

6 MR. COLBY: No objection, Your Honor.

7 THE COURT: All right. Admitted. Okay.

8 (Plaintiff's Exhibit D1 admitted into evidence)

9 BY MR. KODOSKY:

10 Q Mr. Rajan, have you ever seen this document before?

11 A Yes, I have.

12 Q What is it?

13 A This is a subscription agreement that SeeCubic used to  
14 raise money just to -- like two weeks ago.

15 Q Where and when did you see this subscription agreement?

16 A It was given to me by Stream TV shareholders had given it  
17 to me and we put it into the records at Stream TV.

18 Q I'd like to direct your attention to page 7 of 17,  
19 subparagraph F.

20 A Page 17?

21 Q Seven of 17.

22 A Okay. Yes.

23 Q Part of the paragraph there in paragraph F where it states  
24 that there is no lawsuits against the company. Against --  
25 involving any of their respective officers or directors that

1 would be expected to have a materially adverse effect. Do you  
2 see that language?

3 A Yes.

4 Q What's your response or what's your reaction to that  
5 language?

6 A Right now there is between Stream TV and Rembrandt \$2  
7 billion dollars' worth of active lawsuits against SeeCubic of  
8 Delaware. And they are in fact IP claims and trade secret and  
9 offset claims, and you know, we're not supposed to mention  
10 lender liability, but other types of claims against SeeCubic of  
11 Delaware. So it's a ludicrous statement.

12 Q I'm sorry. Did you say \$2 million or \$2 billion?

13 A Two billion dollars in active lawsuits. This is one of  
14 the lawsuits against SeeCubic of Delaware. This statement is  
15 ludicrous.

16 Q What's your understanding of who approved this  
17 subscription agreement?

18 A My understanding is --

19 MR. COLBY: Objection, Your Honor. Foundation.

20 THE COURT: How does he know anything about this?

21 THE WITNESS: By --

22 THE COURT: You don't answer. He's got to respond.

23 MR. KODOSKY: I can ask a follow up question, Your  
24 Honor.

25 THE COURT: Yes. Rephrase this question.

1 BY MR. KODOSKY:

2 Q What understanding do you have of who approved this  
3 subscription agreement?

4 A I know because they've approached me twice for investment.  
5 So the brokers didn't know who I was.

6 THE COURT: Tell us how you understand. You said  
7 they've approached you. Who is they?

8 THE WITNESS: The brokers and brokers and other  
9 people who have put money into SeeCubic told me. That I was  
10 invited to meetings and phone -- telephone calls to make an  
11 investment at SeeCubic. They didn't realize who I was. So the  
12 shareholder knew who I was. And they told me what was  
13 happening, so I know how it was approved.

14 BY MR. KODOSKY:

15 Q And what is your understanding of who approved the  
16 subscription agreement?

17 MR. COLBY: Objection, Your Honor. Hearsay. Mr.  
18 Rajan just said they told me what was happening.

19 THE COURT: Okay.

20 BY MR. KODOSKY:

21 Q Told by agents of party opponents?

22 A Agents of SeeCubic. I was told and my due diligence is --

23 MR. COLBY: Objection, Your Honor.

24 THE COURT: Well, he's saying it was an agent of a  
25 party.

1 MR. COLBY: Right. He initially said shareholders.  
2 Now he's identified these -- mainly identified brokers. I  
3 don't know who he's talking about.

4 THE COURT: Well, he said brokers. He said he was  
5 approached by brokers and others to invest. And his understand  
6 was more than just a share. He was talking about, at least  
7 from my notes, brokers, and other representatives of --

8 MR. COLBY: I think that's almost self-provingly  
9 (sic) unreliable in the sense that --

10 THE COURT: Well, I don't know what to tell you.

11 MR. COLBY: He's proposing the somewhat unreasonable  
12 scenario where these statements can be held against, for  
13 example, SeeCubic because they're a statement of an agent.

14 THE COURT: Well, why don't we ask him who the agents  
15 are?

16 MR. COLBY: And it's unreasonable to think that  
17 SeeCubic -- that those agents were acting at SeeCubic's  
18 direction to try to raise money for Mr. Rajan when he just  
19 testified there's \$2 billion dollars' worth of litigation  
20 between the two companies.

21 THE COURT: Well, he also testified they didn't know  
22 who he was. So let's ask him who these agent -- he said  
23 brokers didn't know who he was. Ask him who the agents were.

24 BY MR. KODOSKY:

25 Q Who were the agents?

1 A There were several. One -- the first time it happened it  
2 was Mark Danenberg (phonetic) and the second time it happened  
3 it was a friend of a Asaf Gola, who's on their board.

4 THE COURT: Who?

5 THE WITNESS: Asaf Gola who is a member of the board  
6 and one of the Defendants in the lawsuit.

7 THE COURT: What's his name?

8 THE WITNESS: The broker's name is Jonathan --

9 MR. COLBY: Objection. I think Mr. Rajan -- are you  
10 looking something up in your phone?

11 THE WITNESS: Yeah. I'm trying to find Jonathan's  
12 last name. Sorry.

13 MR. COLBY: He can't be looking up stuff in his  
14 phone.

15 THE COURT: You can't look at any documents. Just  
16 tell us -- you said it was Mark Denenberg. Who is he?

17 THE WITNESS: He's one -- he was their broker at the  
18 time.

19 THE COURT: Broker for --

20 THE WITNESS: SeeCubic of Delaware.

21 THE COURT: Broker for SeeCubic. And then you say  
22 another guy. What was his name?

23 THE WITNESS: First name was Jonathan. I can't  
24 pronounce his name. It's a very long Jewish name. He's  
25 friends with Asaf Gola who's on the board of directors.



1 THE COURT: He's friends with who?

2 THE WITNESS: Asaf Gola who is on their board of  
3 directors.

4 THE COURT: Could you spell that for me, Asaf Gola?

5 (Phone ringing)

6 THE WITNESS: A-S-F --

7 THE COURT: Who's phone is that?

8 THE WITNESS: That's mine. I turned it off. Sorry.

9 THE COURT: No. Hand that phone to John.

10 THE WITNESS: All right. No problem.

11 THE COURT: Make sure to tell these people don't come  
12 here with phones.

13 MR. KODOSKY: I think Asaf Gola is on the Defendant  
14 list, I think.

15 THE COURT: Okay. Okay. I see A-S-A-F Gola.

16 THE WITNESS: Yeah.

17 THE COURT: Asaf Gola. He's a friend of Asaf Gola  
18 and he was a broker too?

19 THE WITNESS: Yeah, in New York.

20 THE COURT: Okay. And they approached you about?

21 THE WITNESS: Yeah. The approached me for  
22 investment. And the other one came through SeeCubic  
23 shareholders via Kevin Gallop, who's also a board member and a  
24 Defendant in the lawsuit.

25 THE COURT: Okay.

1 MR. COLBY: So, Your Honor, I would maintain the  
2 objection in the face of that answer. A shareholder who knows  
3 Mr. Gallop is not an agent. A friend of Mr. Gola is not an  
4 agent. And Mr. Rajan identified Mr. Danenberg. Mr. Danenberg  
5 has appeared in this case in the sense that we've seen some  
6 emails and documents from 2023 when he was raising money for  
7 Stream, not SeeCubic. He most certainly is not an agent of  
8 SeeCubic during any period of time related to this October 1,  
9 2023 document. He is not an agent, and he has not established  
10 any foundation that he was.

11 THE COURT: Okay. Well counsel, you can cross-  
12 examine him on that. But I -- just because you stand up and  
13 say he wasn't. You can say he believed he was an agent when he  
14 dealt with it. I can't --

15 MR. COLBY: He hasn't established --

16 THE COURT: Well, he said that --

17 MR. KODOSKY: He said it -- sorry.

18 MR. COLBY: The purported basis is --

19 THE COURT: He testified that he dealt with a broker  
20 who test or approached him. And that broker was Mr. Danenberg.  
21 Now, you can cross-examine him against that. But you just  
22 can't stand up and say it's not true.

23 MR. COLBY: Well, Your Honor, but the purported basis  
24 for at least two of the three was that they were a friend of so  
25 and so or a shareholder who came through.

1 THE COURT: Well, I get to them. Those I get.

2 MR. COLBY: That's insufficient.

3 THE COURT: Okay. But we were talking about Mr. --  
4 and I said Broker.

5 MR. COLBY: Danenberg.

6 THE COURT: Mr. Danenberg, okay. And he said  
7 Jonathan was a broker who was a friend. I thought he said  
8 Jonathan from New York. I don't know his last name. Who was a  
9 friend of Asaf Gola was a broker. I don't know if he was just  
10 a friend. I thought he said two brokers. One Mark Denenberg,  
11 Jonathan from New York who was a friend of Asaf Gola. And  
12 Jonathan had a name he couldn't pronounce. I'm not going to  
13 comment the rest. And that the third person is was Kevin  
14 Gollop, who was a shareholder.

15 MR. COLBY: I'm sorry, Your Honor. He testified a  
16 shareholder who knows Mr. Gollop who's a SeeCubic board member.  
17 And the Gola friend is not a broker. He said the Gola friend  
18 is a Gola friend and Gola is on the board. So he's trying to  
19 create the implication that they're agents because they're  
20 friends with or known to board members. That's insufficient to  
21 establish an agency relationship.

22 THE COURT: I got that, but that wasn't my -- I guess  
23 I had a different -- my notes reflect he said something  
24 different. So except with Danenberg that I'm clear he said was  
25 a broker, I thought he said the other broker was Jonathan, I

1 can't remember his name.

2 MR. COLBY: Yeah. He said he's a friend of Mr. Gola,  
3 not a broker.

4 THE COURT: I don't know. Okay. So with respect to  
5 the shareholder -- unless they had some authority, can't be an  
6 agent for the company. I don't know what his role was and know  
7 his -- was it somebody who could buy the company and represent?  
8 I don't know. I don't know what Mr. Gollop's role was.  
9 Because just because you're a shareholder doesn't mean that you  
10 may not be able to act in a capacity as an agent, as a  
11 representative of the Debtor. I don't know. That's why I'm  
12 saying, I can't just conclude -- you just can't say approached  
13 by a shareholder. That's insufficient.

14 MR. COLBY: Or we submit a friend of Mr. Gollop.

15 THE COURT: Again, I have different interpretation  
16 what he said about Mr. -- who Mr. Gollop's friend was. I  
17 thought he said he was a broker. You said he just said he was  
18 a friend of Mr. Gollop. The record will reflect what he said.

19 MR. COLBY: Okay.

20 THE COURT: Okay. But with respect to Mr. Denenberg,  
21 his testimony is that he met Mr. Broker, I mean Mr. Denenberg  
22 as a broker, and that he offered him some participation in his  
23 offering.

24 MR. COLBY: Happy to address Mr. Denenberg either on  
25 cross or redirect.

1 THE COURT: Yeah, on cross. But you can't just say,  
2 well, he's not and I take your word for it. What evidence do I  
3 have? You get to put your evidence the same way they get to  
4 put theirs in. All right. Counsel, you may continue with  
5 respect to how Mr. Rajan knew about who authorized this offer.

6 BY MR. KODOSKY:

7 Q What is your understanding of who approved the  
8 subscription agreement?

9 A My understanding is the subscription that warranty was  
10 approved by the two Skadden lawyers in the courtroom.

11 THE COURT: Okay. That's his understanding.  
12 Approved by who?

13 MR. COLBY: I'm exercising all of my self-restraint,  
14 Your Honor.

15 THE COURT: Okay. Well, maybe he means approved the  
16 language.

17 THE WITNESS: Language.

18 THE COURT: All right.

19 MR. COLBY: I --

20 THE COURT: Counsel, that's his understanding, okay.

21 MR. COLBY: I hope clients have better sense then to  
22 ask me to approve language like that.

23 BY MR. KODOSKY:

24 Q Mr. Rajan, have you ever had meetings --

25 THE COURT: Well, I don't know. Wait a minute.

1 You're a litigator. I'm not sure you'd be on the front end of  
2 this anyway.

3 MR. COLBY: That's what I mean. Yeah, they shouldn't  
4 be ask --

5 THE COURT: Right. The corporate section handling  
6 this and then you would be telling them don't put that in  
7 there, which is what my ruling was. Was no, you can't do that.  
8 We were always the doom and gloom. And the front-end people  
9 were always let's put anything we want in here. Okay.

10 BY MR. KODOSKY:

11 Q Mr. Rajan, have you ever had meetings with the electronics  
12 companies?

13 A Yes, we have.

14 Q Did you ever have meetings with the electronic companies  
15 where use of the technology through either sublicensing or the  
16 self-components such as chip and film or devices was not  
17 discussed?

18 A We've had over -- we've had hundreds of meetings. It was  
19 always discussed; what was the method that they would get the  
20 technologies if it was as a chip and film, or they were going  
21 to get a sublicense? It was always discussed in every single  
22 meeting.

23 Q Mr. Stastney said at the hearing last week that he had  
24 meetings with over -- that they had meetings with over 100  
25 companies and how the technology was going to be used by the

1 companies was never discussed. Did you hear that testimony?

2 A Yes, I did.

3 THE COURT: Wait a minute. What was the testimony?

4 MR. KODOSKY: How the technology was going to be used  
5 by the companies was never discussed.

6 THE WITNESS: According to Mr. Stastney, not us.

7 BY MR. KODOSKY:

8 Q And you also heard Mr. Stastney state how the technology  
9 -- that the three companies getting the samples never discussed  
10 how the technology was going to be used, correct?

11 A Yeah. He testified that they never discussed if it was  
12 going to be a sublicense or if they were going to receive  
13 components.

14 Q And he also said that the four companies that are  
15 supposedly imminently investing \$5 million dollars each, never  
16 discussed how the technology was going to be used; did you hear  
17 him?

18 A That was Mr. Stastney's testimony, correct.

19 Q What's your reaction to that statement?

20 A That's ludicrous.

21 Q Why?

22 A What's the point of having a meeting? I mean, what's the  
23 point? Everybody is a -- wants to know how they're going to  
24 get the technology. Are they going to get chips and  
25 components? Are they going to get -- are they going to get a

1 sublicense? They're not just coming to a meeting for  
2 entertainment.

3 Q All right. Now you -- are you familiar with the Phillips  
4 licensing agreement?

5 A Yes, I am.

6 Q And are you also familiar with the 2014 amendment to the  
7 Phillips licensing agreement?

8 A Sure.

9 Q You heard Mr. Stastney's testimony regarding the  
10 amendment, correct?

11 A Yes.

12 Q What did you understand him to be saying about the  
13 amendment?

14 A First of all, the main document says no sublicensing. The  
15 amendment is parallel licensing. He was trying to say that  
16 that's actually a light -- an understanding to go ahead and  
17 sublicense. Parallel licensing and sublicensing are completely  
18 different. You know, like when you have an apartment, if  
19 you're allowed to, you can sublet it and you just take it and  
20 you cut a deal with somebody. Parallel licensing is just like  
21 I go get a referral card to my landlord and you go get your own  
22 apartment. Phillips was controlling all discussions regarding  
23 their technology between them and the companies. And now it's  
24 a moot point because the Paton's are sold and there's --  
25 they've made it very clear there's no more licensing. So



1 sublicensing is dead.

2 Q And what is SeeCubic of Delaware doing based on the  
3 information that's been gathered?

4 MR. COLBY: Objection. I don't understand the  
5 question.

6 THE COURT: Hold on. Hold on. I'm still back trying  
7 to write what he said previously. Okay. So counsel, he's  
8 objecting to the question. And can you rephrase it because I  
9 forgot what it was?

10 BY MR. KODOSKY:

11 Q How does the Phillips license work?

12 MR. COLBY: Sorry, Your Honor. I would also move to  
13 strike Mr. Rajan's previous answer as either lack of foundation  
14 or hearsay. There's no basis for what Phillips is or isn't  
15 going to do in any evidence he's offered so far.

16 THE COURT: Mr. Stastney testified regarding that?

17 MR. COLBY: Well, I mean, we -- with Mr. Stastney we  
18 looked at the licensing agreement. But what Mr. Rajan just  
19 said is there's no new Paton's. Sublicensing is dead.

20 THE COURT: Hold on.

21 MR. COLBY: No new license -- sorry. No new  
22 licensing from Phillips.

23 THE COURT: And did Stastney testify anything about  
24 the issue about no new licensing being allowed by Phillips?

25 MR. COLBY: Yes.

1 THE COURT: I thought somebody asked him about that.

2 MR. COLBY: Yes. He testified about his  
3 understanding of the 2014 amendment.

4 THE COURT: Okay. And I thought he also testified or  
5 maybe I -- somebody talked about no more licensing being issued  
6 by Phillips.

7 MR. COLBY: Those were cross-examination questions  
8 based upon the sale of the Phillips Patent portfolio. I think  
9 what concerned me about Mr. Rajan's previous answer is he  
10 seemed to be saying that Phillips isn't going to do anymore  
11 license, any sublicense, any parallel licenses, anything like  
12 that. He lack any foundation for that testimony.

13 THE COURT: Well, I thought -- wait a minute. I  
14 thought Mr. Stastney testified to that. And if that's what he  
15 said, he would be basing it on what Stastney said.

16 MR. COLBY: No. Mr. --

17 THE COURT: I mean, I don't know. I can't -- I have  
18 the -- it's not like I can scan -- I mean --

19 MR. COLBY: My recollection is that Mr. Stastney  
20 testified that the 2014 -- to his understanding of the 2014  
21 amendment, which was that additional licenses by Phillips could  
22 not be unreasonably withheld, which is the language of the  
23 document.

24 Again, just going back to Mr. Rajan's answer. He  
25 seems to be making the statement that Phillips is not going to

1 do any new licenses or anything like that. There's no  
2 foundation for Mr. Rajan's knowledge about what Phillips is or  
3 is not going to do.

4 THE COURT: Unless it was testified to here in open  
5 court. I don't know. I'm trying to figure out -- somebody  
6 said it. Maybe it was in colloquy with counsel. I don't know.

7 MR. COLBY: Yeah. So previously the question that  
8 Mr. Stastney was --

9 THE COURT: Where we at?

10 MR. COLBY: I'm looking at page 127 of the October  
11 6th transcript.

12 THE COURT: 127, okay. And we're talking about --  
13 okay.

14 MR. COLBY: So he says -- his name is Alexnder  
15 Damveld. The same Alexander -- the question is, "The same  
16 Alexander Damveld that said there are no licenses available at  
17 this point? Answer: "I don't know what you're referring to."

18 THE COURT: Okay.

19 MR. COLBY: Question: "Are you aware the gentlemen  
20 has informed my client within the last month, dada, dada, da."  
21 And then the question was rephrased because that was -- I  
22 objected. That was not a proffer of evidence and that would be  
23 hearsay. And then Mr. Kodosky moved on to ask if Mr. Stastney  
24 had personal conversations with Mr. Damveld.

25 THE COURT: Right.

1 MR. COLBY: So what I'm saying is just a minute ago,  
2 Mr. --  
3 THE COURT: And there was no foundation. Sustained.  
4 MR. COLBY: Yeah. No foundation.  
5 THE COURT: Lay a foundation.  
6 MR. COLBY: And to the extent there was to be  
7 hearsay.  
8 THE COURT: Because again, I don't know if I heard  
9 this with colloquy between counsel.  
10 MR. COLBY: That's right. I think it was.  
11 THE COURT: I know I heard it. But I thought it  
12 might have been Mr. Stastney's testimony, and clearly it  
13 wasn't. It was from colloquy with counsel. All right,  
14 counsel.  
15 MR. KODOSKY: Permission to approach, Your Honor?  
16 THE COURT: Sure.  
17 BY MR. KODOSKY:  
18 Q Mr. Rajan, you've been handed what's been marked for  
19 identification as D40. Do you recognize this document?  
20 A Yes, I do.  
21 Q What is it?  
22 A It's a letter from Phillips.  
23 Q Letter or an email?  
24 A Email. Email, I'm sorry. An email.  
25 Q Who is Alexander Damveld?

1 A He's in charge of the licenses at Phillips.

2 Q And who is this email sent to you?

3 A Bud Robertson (phonetic), myself, and Dan Renk (phonetic).

4 Q Is Bud Robertson Charles Robertson?

5 A Yes. That's who testified earlier.

6 MR. KODOSKY: Move the admission of this document,  
7 Your Honor.

8 MR. COLBY: Objection, Your Honor. The -- if I  
9 understand correctly, there are going to be questions about  
10 this top email from Mr. Damveld to Mr. Robertson. That is  
11 hearsay. Even if the email itself is a business record, that  
12 is hearsay within hearsay. Hearsay within hearsay is only  
13 admissible if each part of the combined statement conforms with  
14 an exception to the rule. And there is no exception to the  
15 rule that applies to this email from Mr. Damveld.

16 MR. KODOSKY: Counsel doesn't seem to have a grasp on  
17 the hearsay rules, Your Honor. This is not --

18 THE COURT: All right, cut it out.

19 MR. KODOSKY: I'm sorry. That was -- I apologize for  
20 that. This is not being offered to prove the truth of the  
21 matter asserted. But instead is a verbal act that I am  
22 referring to earlier. Operative, legally operative language  
23 affecting the rights of the -- and obligations of the parties.  
24 It's not hearsay pursuant to Rule 801.

25 MR. COLBY: It is in no way a document that embodies

1 the legal rights of the parties. It is a statement by Mr.  
2 Damveld about two other documents, which are in evidence. The  
3 license and the 2014 amendment. But this is not a verbal act.  
4 This is not a document that sets forth or establishes legal  
5 rights of parties.

6 MR. KODOSKY: Your Honor, I'd say it's right there.  
7 "But if it will be finalized, please know that you're existing  
8 license will not change and the license will remain with  
9 Phillips."

10 MR. COLBY: Correct. So the existing license is the  
11 document that establishes the legal rights of the parties.  
12 This statement about it, about something that may or may not  
13 change in the future is not an act that alters those rights.  
14 This is -- we couldn't come into court somewhere and say this  
15 document gives us a license or doesn't give us a license. It's  
16 simply an observation or prediction by Mr. Damveld.

17 Now, substantively is this -- does this even remotely  
18 help the Debtors with their TRO? No. Their claim is that the  
19 TRO -- that Phillips is going to take away the license. What  
20 this says is your license isn't going to change, but --

21 THE COURT: Well, no. It says your license will  
22 remain with Phillips. It didn't say it's not going to change.

23 MR. COLBY: Yeah. That's referring to the sale. It  
24 undermines their argument in another instance. The Debtors  
25 have argued that the sale of the Patent portfolio is somehow

1 going to change the landscape here. What they're saying is --

2 THE COURT: No, no, no.

3 MR. COLBY: -- Phillips still controls the licensing.

4 THE COURT: Their license. I think his testimony is  
5 a little bit different. His testimony is that based on some  
6 basis, Phillips is not going to be licensing to anyone else.  
7 That's what his testimony is about. I'm not quite sure how  
8 this helps me to figure out how he came to that understanding,  
9 which is what you objected to.

10 MR. COLBY: Correct, Your Honor. But it's also  
11 hearsay that is inadmissible.

12 THE COURT: Okay. The reason it's hearsay because  
13 the email in question is from Mr. Alexander Damveld. And it  
14 was cc'd to Mister --

15 MR. KODOSKY: Mr. Rajan.

16 THE COURT: -- Rajan, Dan, and that was it. It was  
17 sent to the person who was before -- testified earlier.

18 MR. COLBY: Yeah.

19 THE COURT: Mr. Robinson.

20 MR. COLBY: And a verbal act, Your Honor, is a  
21 statement that has legal significance or brings about a legal  
22 consequence simply by its existence.

23 MR. KODOSKY: What are you referring from?

24 MR. COLBY: This -- I'm referring to a case

25 Transportes Aereos Pegaso, S.A. the C.V. vs. Bell Helicopter

1 Textron, District of Delaware 2009, 623 F.Supp.2d 518.

2 THE COURT: Okay. And so, you believe that for the  
3 verbal which because it's -- I mean, yeah. Because it's  
4 nonverbal, that it's subject to the hearsay. At the beginning,  
5 it talks about what the statement is in the hearsay rule on 80  
6 -- what did I do with my rule book? 801 --

7 MR. COLBY: Right.

8 THE COURT: 801 says, "A state means a person's oral  
9 assertion, written assertion, or nonverbal conduct with the  
10 person intended if the person intended it as an insertion." So  
11 it's implicit in there if it's a verbal -- I don't know how you  
12 would call it. I guess you could -- verbal conduct is not a  
13 statement. And you're saying that based on that Delaware  
14 court?

15 MR. COLBY: No. I'm sorry, Your Honor. I don't read  
16 that the same way that you do. And it's an out of --

17 THE COURT: It's nonverbal.

18 MR. COLBY: It's an out-of-court statement that is  
19 either -- let me find the language so I'm not --

20 THE COURT: A statement, right. It's an out-of-court  
21 statement --

22 MR. COLBY: Means can oral assertion, a written  
23 assertion, or nonverbal conduct that's intended to communicate  
24 to an assertion.

25 THE COURT: Right.



1 MR. COLBY: Right. So that's just saying if you nod  
2 your head or shake your head or something like that. So that  
3 doesn't apply to this, okay. This is a written communication.  
4 And then --

5 THE COURT: Okay. I get that.

6 MR. COLBY: Yeah. And it's being offered for the  
7 truth of the matter. They're saying Phillips isn't going to do  
8 any additional licenses. And the reason why it's not a verbal  
9 act in the sense like an act that has legal consequences is  
10 because the licenses, the future -- the parties can disagree  
11 about whether the 2014 amendment requires Phillips to grant  
12 additional licenses or not unreasonably withhold or whatever.

13 But the simple fact is that the 2014 amendment, the  
14 2010 original license, those are the terms that established the  
15 contractual rights of the parties with respect to this issue of  
16 licensing and sublicensing. This email does not. It is not a  
17 verbal act.

18 THE COURT: Counsel, I thought the whole line of  
19 questioning went to the issue of the Debtors -- at least Mr.  
20 Rajan is a Debtor's representative, of his understanding that  
21 Phillips would not be issuing any more sublicense, anymore  
22 licenses. That was the issue. I don't see anywhere in here  
23 first of all where it says anything about us not issuing  
24 anymore licensing. I think that's what the whole issue was  
25 when you objected and said there's no foundation upon which we

1 can -- Mister -- lay the foundation how Mr. Rajan acquired that  
2 knowledge. Isn't that what this was about?

3 All right. I guess -- I mean, I'm not reading it  
4 because I'm not supposed to really be --

5 MR. COLBY: Right. So for example, Mr. Rajan could  
6 testify what his understanding is of the 2014 amendment, and he  
7 did, right? That's his understanding. But to the extent he's  
8 going to say my understanding is based on the fact that  
9 Phillips told me they weren't doing any sublicenses, that's  
10 hearsay. And they can't -- whether it's him saying they told  
11 me or whether it's him trying to introduce this email into  
12 evidence, it's the same problem. It's hearsay. It's  
13 inadmissible.

14 THE COURT: Hold on, counsel. All right.

15 MR. COLBY: And to finish the thought, Your Honor, on  
16 a verbal act. Like a verbal act is something that, for  
17 example, a verbal act that makes a contract. So all of a  
18 sudden, you know, it has a very direct legal consequence or to  
19 make a threat. Those are things that the third circuit has  
20 identified as being verbal acts because the threat has a legal  
21 consequence of a criminal act or something like that.

22 So it's a legally operative statement. Read in an  
23 email about what you may or may not do in the future is not a  
24 legally operative statement.

25 MR. KODOSKY: Your Honor, I don't know what Third

1 Circuit case he's referring to.

2 THE COURT: All right. Well, that case is -- don't  
3 talk to him. Talk to me.

4 MR. KODOSKY: Sorry. I'm holding in front of me the  
5 notes of advisory committee on the rules. It states that the  
6 effect is to exclude from hearsay the entire category of quote-  
7 on-quote verbal acts and verbal parts of an act in which the  
8 statement itself affects the legal rights of the parties or is  
9 a circumstance bearing on conduct affecting their rights.

10 MR. COLBY: Yeah. This expressly --

11 MR. KODOSKY: That's straight out of the -- excuse  
12 me. Straight out of the advisor comments. But I'll also point  
13 out, Your Honor, the Rule 803-15, statements, and documents  
14 that affect an interest in property would seem to apply. We  
15 don't -- I don't believe that this is hearsay. But I think  
16 that it's a verbal act. But even if it was hearsay, it would  
17 seem like 803-15 would seem to apply.

18 THE COURT: Hold on. Let me -- statement affecting a  
19 -- this statement is admissible -- tells me how you're  
20 supposed to do this.

21 "The statement is containing a document purporting to  
22 establish or affect an interest in property. The  
23 matter stated was relevant to the purpose of the  
24 document and dealings with the property since the  
25 document was made had not been inconsistent with the

1 truth of the statement or the purpose of the  
2 document."

3 Okay.

4 MR. COLBY: So, Your Honor, to the -- what this email  
5 says is the existing license will not change.

6 THE COURT: It also says some other stuff at the top.

7 MR. COLBY: Yeah. It's about again -- and that's  
8 not, certainly not a verbal act. It says, "I understand your  
9 request. The discussions regarding the patent sale of  
10 advance." That's just information.

11 THE COURT: That is not. It says, "when you're in a  
12 phase that is not feasible to create new contracts or amend,  
13 withstand, change, existing anymore."

14 MR. COLBY: Again, so this is not a document that  
15 creates, amends, or changes a legal right. It expressly says  
16 it's not doing that. Now, so what are the legally --

17 THE COURT: It also says it's not feasible to create  
18 new contracts.

19 MR. COLBY: Correct. And so what that leaves are the  
20 existing contracts. And the existing contracts -- so first of  
21 all, that makes it by definition. Not a verbal act. Not a  
22 statement in documents that affect the interest in property  
23 because it's expressly saying it's not changing anything. It's  
24 not giving any new rights. It is on its face --

25 THE COURT: Well, does it have to change?

1 MR. COLBY: It doesn't --

2 THE COURT: Does 803-15 say it has to change rights  
3 or what does it say? Let me go back to 803.

4 MR. COLBY: It says establish or affect an interest  
5 in property. It's like the equivalent --

6 THE COURT: Establish or affect? What does it mean?

7 MR. COLBY: Like a deed.

8 THE COURT: I'll write you and say that it doesn't  
9 affect -- that that doesn't mean affect?

10 MR. COLBY: It's like a deed or a transfer in  
11 property just like a verbal act is the formation of a contract.  
12 This is by definition on its face none of those things.

13 THE COURT: It's a written document you're saying?

14 MR. COLBY: It's just -- it's words on a page. It  
15 does not --

16 THE COURT: It's not a word, counsel. It's an email.  
17 There was someone wrote and sent to someone else.

18 MR. COLBY: Right.

19 THE COURT: It's not just pages. So it's an out-of-  
20 court statement.

21 MR. COLBY: Correct.

22 THE COURT: That's being offered to establish that  
23 Phillips is not granting anymore license.

24 MR. COLBY: And that the -- this is the important  
25 point, Your Honor. That the current license will not change.

1 And the current license says that Phillips will not  
2 unreasonably withhold --

3 THE COURT: Counsel --

4 MR. COLBY: -- additional licenses.

5 THE COURT: -- I get that you're going to the next  
6 step. But all he -- you objected on the basis that Mr. Rajan  
7 said Phillips is not granting anymore licenses, okay. You  
8 objected and said, well, what's the basis for that? How does  
9 he know that? Where does he get it from? And so -- and he  
10 hands him this document that says he wants to have introduced  
11 into evidence as the basis for saying why he came to that  
12 conclusion. How did he come to that conclusion and what was  
13 the basis for that?

14 So are we saying that he's offering it to say this is  
15 how he came to the basis for that information or are you  
16 objecting because you're saying something -- and I think you're  
17 going to object a step further to say that he can't use this  
18 document as a basis as to how he came to his understanding that  
19 they will not be issuing more licenses.

20 MR. COLBY: So, Your Honor, what I'm actually  
21 objecting to now -- so I made the previous objection. And then  
22 in response to it, Mr. Kodosky moved on to additional  
23 questioning and attempted to introduce this into evidence. In  
24 order for it to be introduced into evidence, it can't be  
25 hearsay, or it needs to fall into one of the exceptions, and it

1 doesn't.

2           So what we're talking about now is whether or not  
3 this document should be admitted into evidence. And it is  
4 plainly hearsay and is plainly not a verbal act or a statement  
5 in documents that affect an interest in property. It's just --

6           THE COURT: I'll sustain that. I don't think it's a  
7 verbal act nor do I think it's 801-15 or 803-15.

8           Okay. Now, that leaves the issue of whether it  
9 serves as a basis. And maybe it doesn't have to be admitted.  
10 But he shows that to him and maybe that's how he came to the --  
11 because you're saying he doesn't know how he -- he just made a  
12 conclusion.

13           MR. COLBY: Well, if Mr. Kodosky wants to ask and Mr.  
14 Rajan wants to testify how he -- what is, you know, his  
15 understanding --

16           THE COURT: I thought that's what this was for.

17           MR. COLBY: I think the Court -- well, but not  
18 putting it into evidence, Your Honor.

19           THE COURT: At that, counsel.

20           MR. COLBY: Okay. Then maybe, but if the answer is  
21 well I was told, whether it's in an email or directly, then  
22 that's inadmissible.

23           THE COURT: I get that.

24           MR. COLBY: So I'm happy to go back to --

25           THE COURT: Which is how did he come to his

1 understanding? And you're objecting because you're saying this  
2 document cannot be used as a foundation to say -- he could have  
3 just said, here's the document. Did you refresh your  
4 recollect? Give it back to me. Does this refresh your  
5 recollection on how you came to that conclusion?

6 MR. COLBY: Well, I don't think that Mister --

7 THE COURT: Well, he said --

8 MR. COLBY: -- Mr. Rajan testified that he had --

9 THE COURT: Forgot. I know.

10 MR. COLBY: -- forgotten anything.

11 THE COURT: Well, he just -- but he said do you  
12 remember? Do you recall? You're absolutely right. He could  
13 have done it some other way. So I'm going to sustain the  
14 objection. I don't think this is admissible because it doesn't  
15 meet the hearsay exception. So, okay. Counsel, you can  
16 continue with your questioning of Mr. Rajan. We're fast  
17 approaching 6:00. Go ahead.

18 MR. KODOSKY: Permission to approach, Your Honor?

19 THE COURT: Okay. Got to make sure not admitted,  
20 okay. I'm writing on here. Give it to John.

21 THE BAILIFF: Mister -- has not admitted 40.

22 THE COURT: 40, I just ruled on that. I know I  
23 shouldn't be but.

24 BY MR. KODOSKY:

25 Q Mr. Rajan, do you recognize this document?



1 A Yes, I do.

2 Q What is it?

3 A It's an email from Phillips.

4 Q And what is Phillips conveying through this email to you  
5 all?

6 MR. COLBY: Objection, Your Honor. Hearsay. It's  
7 effectively the same document that we just -- same substance,  
8 same issue that we just addressed.

9 THE COURT: Counsel?

10 MR. KODOSKY: I think it's a verbal act, Your Honor.  
11 I think that it affects property rights. Relates to --

12 THE COURT: Objection sustained. Let's move on.  
13 It's the same document. I don't know how to rule differently.  
14 BY MR. KODOSKY:

15 Q Mr. Rajan, you were present for Mr. Stastney's testimony  
16 when he stated that he will be revealing the specs of Stream TV  
17 proposed projects?

18 A Yeah. He said that in his testimony in his role of  
19 director, he will review the specifications and also will  
20 decide if the Netherlands will work on Stream TV projects  
21 because of the resource demand if it was warranted. So we have  
22 a situation where Stream TV subsidiary is being run by the CEO  
23 of a competitor and the competitor is going to see all of our  
24 specifications and decide whether or not our subsidiary is  
25 going to work on Stream TV and Technovative projects, the

1 Debtor, and the Debtor's estate.

2 MR. COLBY: Objection, Your Honor. Move to strike  
3 the portion of the answer where Mr. Rajan is merely relaying  
4 testimony that took place already in this court. There's no  
5 reason for Mr. Rajan to sit here and say, back on October 6th,  
6 Mr. Stastney said this. Mr. Stastney says that. That record  
7 exists. That was also incorrect. Mr. Stastney testified that  
8 he would put an independent party in place to review Stream's  
9 projects.

10 So it's not consistent with the actual testimony.  
11 And I think that shows why it's bad evidence. It's just Mr.  
12 Rajan sitting here saying Mr. Stastney testified about this or  
13 that. He's here to give his testimony. Not to recast and  
14 recharacterize what Mr. Stastney said. That's written down in  
15 black and white. That's the evidence the Court should  
16 consider.

17 THE COURT: Counsel?

18 MR. KODOSKY: At this rate, Your Honor, I think that  
19 Mr. Rajan accurately described Mr. Stastney's testimony when he  
20 said that the engineers would be reviewing the specs that would  
21 ultimately be brought to him to approve. And to the extent  
22 that that is directly impacting the Debtor's, the estate, and  
23 our ability to compete, to do business.

24 THE COURT: I get that's argument at this point. But  
25 what you're saying is that counsel was objecting on the basis

1 is that the testimony is already in the record. He doesn't  
2 need to repeat it. And that it's a mischaracterization of the  
3 testimony. Okay. So let's deal first with he said, you know,  
4 he said he would be reviewing the specs for projects. And that  
5 I get that he's a competitor of Stream. And Stream's position  
6 is that he will be determining what projects will go forward  
7 with respect to Stream.

8 And counsel has objected to it has a  
9 mischaracterization of the record. And what Mr. Stastney  
10 testified to, Mr. Kodosky. That's what he's saying.

11 MR. KODOSKY: Page 178, line 21.

12 THE COURT: 178, line 21. Okay, line what?

13 MR. KODOSKY: I believe it's line 21.

14 THE COURT: "And if the Debtors have projects that  
15 they want to propose, then they would have to propose those to  
16 you, correct? Or as directed by me and the process we plan to  
17 put in place and will seek approval from the Court is that  
18 they'll go to the employees to the extent that a name is needed  
19 and will be given only to the staff. And I won't receive the  
20 name. I'll receive the details of the analysis of the project  
21 to determine its feasibility, but not the name." And the  
22 question is, where is that in the protocol? And it states that  
23 it doesn't.

24 Yeah, it says there -- and then you go further down,  
25 and he says there are -- yes, he admitted that there were

1 provisions that have to be modified to affect the spirit and  
2 we're in the process of doing that because of the protocols  
3 were made when there was an independent director involved as  
4 opposed to essentially the chairman and CEO of one of the two  
5 parties. Okay. So it says he's going to change the process.

6 MR. COLBY: Right. So my only point is, Your Honor,  
7 is Mr. Rajan can testify what his testimony is about that, but  
8 he's not here to try to recast or reshape what Mr. Stastney  
9 said. The Court has that. It's in black and white. It's  
10 written on the page. I think the best use of our time would be  
11 to focus on not having an argument about what Mr. Stastney said  
12 a week ago.

13 THE COURT: Or what is his understanding of what the  
14 consequences of that. He can tell me that.

15 MR. COLBY: Yeah, but --

16 THE COURT: You heard what Mr. Stastney said. What  
17 do you think that impact is, if any, on Stream and it's future  
18 projects?

19 MR. COLBY: And there were a handful of similar  
20 questions about what Mr. Stastney said earlier. I didn't  
21 object, but I'm trying to -- at a certain point we've got to  
22 move on and just focus on what Mr. Rajan is here to testify  
23 about.

24 THE COURT: All right. Counsel, I'm going to sustain  
25 the objection. Just -- I already know what Mr. Stastney said.

1 You need to ask him -- you know, were you here? Did you hear  
2 what he testify? What impact, if any, you believe this is  
3 going to have?

4 MR. KODOSKY: That was my next question, Your Honor.

5 BY MR. KODOSKY:

6 Q What are the implications for the Debtor and the Debtor's  
7 estate based upon Mr. Stastney's testimony?

8 A It would be like the CEO of Pepsi is in charge of the  
9 subsidiary of Coke and is going to see Coke's specifications  
10 and decide the subsidiaries. Is going to work on Coca-Cola's  
11 projects. That is -- they're already shifting business away  
12 from the company. They're shifting investment away from the  
13 Debtor and the Debtor's estate. And now they're in charge of  
14 also the assets, which didn't come back. And when we were in  
15 Amsterdam, there was difficulty finding an independent director  
16 because of all the IP litigation. And so, that's why we  
17 suggested an independent director here from Philadelphia that  
18 can work with Rembrandt and bring the project forward without  
19 hurting the Debtor and the Debtor's estate.

20 Q Who is it that you would propose be the independent  
21 director?

22 A The Amsterdam court said twice that they needed guidance  
23 from the U.S. court. So we suggested a retired judge  
24 preferably from Philadelphia so they're familiar with the  
25 eastern district or a Philadelphia lawyer who would serve as

1 the independent director of the Netherland's company because  
2 they're be familiar with, you know, who the procedures work in  
3 front of the judge and everything.

4 Q Is that Judge Carey, former Judge Carey?

5 A Yes.

6 Q What size purchase orders would you look to Judge Carey to  
7 help get the assets back that you contend have never been  
8 returned?

9 A We have over 140 -- I'm sorry, \$160 million dollars of  
10 purchase orders. There's a number of Stream TV assets that are  
11 being housed in the Netherlands like a warehouse. So we would  
12 want to work with the -- Judge Carey to also get the assets as  
13 well as get a couple of the key Netherlands people to work with  
14 our team in Silicon Valley to help with not only our purchase  
15 orders, but other customers who are issuing PO's. And some of  
16 them have even been involved in investment.

17 Q You mentioned that you all have \$160 million dollars in  
18 purchase orders. Who's financing the purchase orders?

19 A We have BOE and also a company in Florida, Evol Capital  
20 (phonetic). They're giving supply chain finance.

21 Q And who's doing the electronics?

22 A Our Silicon Valley team that stayed with me after the  
23 Chancery Court ruling that did stay with me. About 60 percent  
24 of the team stayed. And they've been doing the electronics.

25 Q Who's doing the bonding?

1 A Fuji Pream (phonetic). They have bonding machines, and  
2 they can scale into the millions of units per year when we're  
3 working with them on the production to get -- begin shipping  
4 units.

5 Q How much money have you spent since you lost in Chancery  
6 Court?

7 A Over \$10 million Stream TV has spent.

8 Q Who's financing the reorganization of Stream?

9 A VSI.

10 Q How are you paying off liabilities?

11 A Well, we're doing it with a combination of both investor  
12 money and some of it's the PO. But we have investors that are  
13 financing the bankruptcy and are anxious to take care of the  
14 unsecured and any allowable claims.

15 Q Who gave the PO's?

16 A It was a company called Psystar who bought 3,000 TV's from  
17 Stream TV as well as Southern Telecom. They're a company that  
18 owns like the Brookstone brand, Sharper Image, Polaroid,  
19 Westinghouse, and they sell like to Walmart and Target and a  
20 number of other stores.

21 Q Last question, Mr. Rajan. If you could in summary discuss  
22 the -- what the TRO is for?

23 A There's two parts to the TRO. One is, which I stated in  
24 my testimony, Stream TV's position is the Phillips patents are  
25 sold. You can't sublicense something that is sold. And

1 hundreds of people have been told about the sublicensing and it  
2 continues to happen even though the Phillips patents have been  
3 sold. And investors have been told we need a letter that's  
4 approved by the Court that tells everybody the Phillips patents  
5 are sold and there's no more Phillips licenses available right  
6 now. And if they want the technology they need to buy  
7 components or they need to buy devices. If we don't, we run  
8 the risk of having our license cancelled immediately. The  
9 second thing is just recently, Mr. Stastney became the director  
10 of Stream TV and Technovative's subsidiary where he is going to  
11 see our specifications, our customer's specifications. And  
12 he's going to be vetoing our products and they've already been  
13 shifting sales and investment to another company. Telling  
14 people that they're sublicensing. So we need immediate action  
15 because we're at great risk right now. It's irreparable  
16 damage if we lose our licenses, also our trade secrets are --  
17 have been exposed. They're continuing to be exposed. And they  
18 need to be protected and we, you know, we're spending money  
19 every day in the bankruptcy. We're getting geared up for  
20 production. We can't now have a competitor seeing our trade  
21 secrets and specifications and then, canceling our projects  
22 when we're reorganizing and settling the debts. So we need  
23 immediate help from the Court.

24	Q	Thank you.
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25 MR. KODOSKY: No further questions.



1 MR. COLBY: I would just move to strike the portions  
2 of the answer about what investors told Mr. Rajan or Phillips  
3 not issuing new licenses. He's got no foundation, to the  
4 extent he does, it's hearsay.

5 MR. KODOSKY: No legal note says --

6 THE COURT: Counsel.

7 MR. KODOSKY: -- its own independent significance --

8 THE COURT: Counsel.

9 MR. KODOSKY: -- it --

10 THE COURT: Counsel.

11 MR. KODOSKY: I'm sorry.

12 THE COURT: Mr. Colby has moved to strike with  
13 respect to Mr. Rajan testimony regarding the cancellation or  
14 the no -- Phillips no longer issuing licenses. No basis for  
15 that testimony. And the testimony about what other --

16 MR. COLBY: That investors told Mr. Rajan that they  
17 want a letter or something about the Phillips license.

18 THE COURT: No, I believe he can --

19 MR. COLBY: He said investors told us.

20 THE COURT: Well, Stastney hearings --

21 MR. KODOSKY: I think what Mr. Rajan was saying was  
22 that Mr. Stastney has communicated with over a hundred  
23 companies and the hundred companies need to be sent a letter  
24 saying that -- is that what you were --

25 THE COURT: Yeah, I think he was saying that he



1 MR. ZAHRALDDIN: Your Honor, I just want to address  
2 the question of the independent legal significance of the  
3 notice, the letters, or the discussion. There's independent --  
4 when you get notice pursuant to a contract, that has  
5 independent legal significance. There's a provision in the  
6 Phillips license that says, "If the license -- if the patents  
7 are going to be sold, you will be advised in writing." The E-  
8 sign, which is a federal law, makes all emails writing.

9 That's how they're held up as contracts, et cetera.  
10 I don't think that's any different from legal notice coming  
11 from someone at Phillips to Mr. Rajan, that way Mr. Rajan knows  
12 might -- there are some things that are changing and there are  
13 some things that are not changing. But --

14 THE COURT: So you're saying this was legal notice to  
15 a -- who was -- but he was sending this to Mr. Robertson.

16 MR. ZAHRALDDIN: Yeah, Mr. Robertson --

17 THE COURT: Because I didn't admit them. That wasn't  
18 an argument. It was sent to Mr. Robertson at Stream  
19 Acquisition. I don't know who the heck they are.

20 MR. ZAHRALDDIN: Yes, Your Honor. So Mr. Robertson  
21 is here in court with us and he has testified before that he is  
22 a contract employee, a 1099, not a W2. And that he has had  
23 responsibilities and continues with responsibilities that go  
24 with the license. He was there when they first did it and he  
25 was also the CEO of the Netherlands.

1 THE COURT: So you're saying that this -- these  
2 emails constitute notice to the holder of the license of what's  
3 going on with the license?

4 MR. ZAHRALDDIN: Yes, that's exactly correct, Your  
5 Honor.

6 THE COURT: It's kind of late to argue that that's  
7 already said not admitted.

8 MR. ZAHRALDDIN: Well, I understand that, Your Honor.  
9 But we're talking now about -- and it's not that much later,  
10 Your Honor. I mean, I know we're held --

11 THE COURT: Well --

12 MR. ZAHRALDDIN: -- I know you want us to do things  
13 promptly, but that was only about 15 minutes ago that we talked  
14 about the --

15 THE COURT: I thought he was objecting to Mr. Rajan's  
16 testimony regarding no longer issue.

17 MR. COLBY: Something completely different, yeah.

18 MR. ZAHRALDDIN: No, the Phillips license.

19 THE COURT: Well, he said no longer issuing licenses  
20 and --

21 MR. ZAHRALDDIN: Yes.

22 THE COURT: -- you want me to strike that. And he's  
23 saying wait a minute, don't strike it because those previous  
24 documents that you say we're not admitting were simply just  
25 notice from the notice --

1 MR. ZAHRALDDIN: Licensor.

2 THE COURT: -- from the licensor --

3 MR. ZAHRALDDIN: Yes.

4 THE COURT: -- to the licensee about what's going on  
5 with the license and that this serves as a notice because it  
6 was sent to the representative because we already had Mr.  
7 Robertson testify what his relationship with, you know, maybe  
8 he might have been the better party to ask about these, but  
9 they weren't. You know, I can't tell people how to run their  
10 cases, but I get what he's saying. I don't know. Can I --  
11 because now they're offering another basis --

12 MR. COLBY: Right.

13 THE COURT: -- for a document I already said could  
14 not be admitted.

15 MR. COLBY: It -- but the document that they're  
16 reportedly relying on says that the existing license will not  
17 change. So terms --

18 THE COURT: But that's not what he's --

19 MR. COLBY: -- whatever those terms --

20 THE COURT: Right.

21 MR. COLBY: -- may be. I understand what Mr.  
22 Zahralddin is saying. But whatever those terms may be, as they  
23 exist in the current license --

24 THE COURT: But that's --

25 MR. COLBY: -- they're not changing.

1 THE COURT: But that's not what we're talking about.  
2 You objected to Mr. Rajan's testimony, that no -- that Phillips  
3 will not be issuing other licenses, having nothing to do with  
4 the debt. That's a separate issue. The separate issue may go  
5 to your argument that I don't know what they're talking about,  
6 this is not going to have any -- because their position is,  
7 it's going to impact the license. You believe that this  
8 doesn't do that. But this went to whether -- what the basis  
9 for Mr. Rajan's testimony that Phillips would not be issuing  
10 more licenses.

11 MR. COLBY: Right. I'm -- I think with the -- with  
12 respect to the last piece of testimony, that Mr. Rajan offered  
13 that he said, you know, Phillips is not going to do anymore  
14 licenses. I'm content to rest on the record as it is and where  
15 we will go when we revisit it with respect to the 2014  
16 amendment and all those other things. I'll withdraw the motion  
17 to strike that particular piece of --

18 THE COURT: Right. And that's simply --

19 MR. COLBY: -- testimony. I understand --

20 THE COURT: Counsel.

21 MR. COLBY: -- for what it's worth.

22 THE COURT: That's just his understanding of what  
23 they're going to do with future --

24 MR. COLBY: Right.

25 THE COURT: -- licenses. I didn't take this -- and

1 that's why I kept trying to figure out, are we talking about --  
2 I get your position, is that you're going to a different issue.  
3 You're going to the issue that they're claiming that it's  
4 somehow going to affect their license and it says in here it's  
5 not. But that isn't what his testimony and your original  
6 objection, which is what I sustained, was because they said it  
7 was a verbal exception and it was 803(50) and it didn't meet  
8 any of that.

9 That's why I sustained, because it didn't meet that  
10 exception. But now they're saying this is just notice from the  
11 lessor or the licensor rather as to what's going on with your  
12 license and using it for the portion that says they're selling  
13 -- and I understand based on that, that they're not going to  
14 license to anybody else.

15 MR. COLBY: Right.

16 THE COURT: But --

17 MR. COLBY: So the document is still hearsay. It's  
18 still inadmissible. Mr. Rajan's testimony -- his  
19 understanding, I think, I'll withdraw the motion to strike Mr.  
20 Rajan's understanding.

21 THE COURT: Okay.

22 Counsel?

23 MR. KODOSKY: Your Honor, I think that's fine. We do  
24 reserve right for rebuttal and --

25 THE COURT: Right. Which is why I don't know why we

1 were making a big argument --

2 MR. KODOSKY: I --

3 THE COURT: -- because this was his understanding and  
4 I thought that's what I kept trying to --

5 MR. KODOSKY: I just didn't want my witness --

6 THE COURT: All right. I get it. So not going to  
7 strike the issue -- the -- his testimony as to his  
8 understanding of what Phillips' intentions were to future  
9 license.

10 With respect to what -- he said what other people  
11 told him, clearly, that's hearsay. He can't -- anything that  
12 somebody else told him that he's serving as a basis for why he  
13 believes he needs some relief, I'm going to strike that because  
14 that's hearsay. Unless it was a statement with some other  
15 exception either -- or statement of a party in interest or some  
16 other exception to the hearsay.

17 And counsel, what's your response? That he wants to  
18 strike anything that Mr. Rajan said based on what someone told  
19 him why we needed the relief? Or what he believed was based on  
20 what someone else told him?

21 MR. KODOSKY: Sorry, I missed that last part, Your  
22 Honor.

23 THE COURT: He's objecting because Mr. Rajan  
24 testified that one of the -- they needed this letter, I think  
25 it was, because people told him that they needed something with



1 respect to the understanding of what was going on with the  
2 license or the sub -- they needed a letter based on his  
3 understanding or discussions with other people.

4 MR. KODOSKY: Yeah, it's -- I think there's some --  
5 maybe some confusion going on, Your Honor. He didn't testify  
6 that it was based on anybody saying that to him. Instead, it's  
7 -- we believe that based on Mr. Stastney's testimony that he  
8 had dealt with over a hundred companies, that the letter needs  
9 to be sent to those companies.

10 Mr. Rajan?

11 THE WITNESS: Yeah.

12 THE COURT: Okay. No, no, no, no.

13 MR. COLBY: There's no --

14 THE COURT: All right.

15 MR. COLBY: -- hand signals.

16 THE COURT: So -- all right. Counsel.

17 MR. COLBY: No question pending.

18 THE COURT: To the extent that he said that anything  
19 is based on something somebody told him, I'm striking it.

20 Okay. If he didn't, he didn't. If he did, it's stricken.

21 Anything else with respect to this direct testimony?  
22 Counsel?

23 MR. KODOSKY: No, Your Honor.

24 THE COURT: All right. Mr. Kodosky that's your  
25 direct. You're not -- it's 6 -- almost 6:30. You're

1 definitely not going to start with cross-examination of Mr.  
2 Rajan right now, because I think we now have cross-examination.  
3 Mr. Colby, I expect your cross is probably going to take just  
4 as long or maybe with -- equal to his direct. It typically is,  
5 but I don't know.

6 MR. COLBY: That's as good as guess as mine would be.

7 THE COURT: All right. And then, you guys may have a  
8 rebuttal by calling Mr. Stastney --

9 MR. COLBY: Stastney.

10 THE COURT: -- as a rebuttal witness? Okay. So  
11 we're talking about another four or five hours? Another day?  
12 I don't know.

13 MR. COLBY: Well, we've gotten closer.

14 THE COURT: I thought this would be it, but  
15 apparently not.

16 MR. COLBY: Yeah, yeah. It's a--

17 THE COURT: Have the parties discussed some dates?  
18 We have some dates for you.

19 MR. COLBY: We did discuss some dates. We don't have  
20 Mr. Caponi here any longer. I can't speak for him. But we  
21 discussed with John also some dates but --

22 THE COURT: Okay. Good. Because those dates that  
23 were given to me by my courtroom deputy told me --

24 MR. COLBY: But my understanding is he may not have  
25 had complete information, so I don't want to speak for him.

1 THE COURT: All right. So I know tomorrow was one of  
2 the dates that was on the table. I know Friday we have a  
3 trial, but she was trying to ascertain whether that was going  
4 forward or not. So that was one -- wait a minute.

5 Mr. Rajan can step down? We're done, right, for now  
6 with respect to his direct testimony.

7 You may step down, Mr. Rajan. You cannot discuss  
8 your testimony with your counsel, because you have to be cross-  
9 examined. And the first question I'm going to ask you when you  
10 come back is have you discussed your testimony with your  
11 counsel. That's just how this works. And you may step down.

12 All right. Let me see if I can pull up my calendar.  
13 I don't even know what's on. I don't really know because --

14 UNIDENTIFIED SPEAKER: Yeah, I think we're going to  
15 have to contact Eileen, because everyone's not available  
16 Tuesday, Wednesday, or Thursday afternoon this week. I  
17 already --

18 THE COURT: For what?

19 UNIDENTIFIED SPEAKER: -- asked about this week.

20 THE COURT: To do what?

21 UNIDENTIFIED SPEAKER: For this, if we were going  
22 to --

23 THE COURT: Oh --

24 UNIDENTIFIED SPEAKER: -- because we had the  
25 afternoons possibly open.

1 THE COURT: Okay. And who's not available?

2 UNIDENTIFIED SPEAKER: Mr. Wright was --

3 THE COURT: Oh, okay. You mean the counsel? Yes.

4 UNIDENTIFIED SPEAKER: Yes, that's what I'm saying.

5 THE COURT: Oh, yeah, yeah. I thought you meant for  
6 -- and I just --

7 UNIDENTIFIED SPEAKER: No, I'm saying this week's  
8 probably not going to work.

9 THE COURT: How do you transfer -- change the ADU  
10 because this is just not working here. Because the domain has  
11 to change with more choices.

12 UNIDENTIFIED SPEAKER: Yeah.

13 THE COURT: I want -- yes.

14 UNIDENTIFIED SPEAKER: Yeah.

15 THE COURT: No, it's just giving me -- well, wait a  
16 minute. Because this is -- no. Anyways, never mind. I don't  
17 have my calendar.

18 What dates did you discuss with the parties?

19 UNIDENTIFIED SPEAKER: Basically, every afternoon  
20 this week.

21 THE COURT: Okay.

22 UNIDENTIFIED SPEAKER: Except Friday. We didn't talk  
23 about Friday.

24 THE COURT: Friday --

25 UNIDENTIFIED SPEAKER: But I don't know.

1 THE COURT: -- maybe the -- maybe we won't know until  
2 tomorrow whether the entire day of Friday is available.

3 MR. COLBY: I believe Mr. Stastney is unavailable on  
4 Friday. I'm definitely unavailable on Friday, Your Honor. I  
5 apologize.

6 THE COURT: Okay. Well, Friday's off the table.

7 MR. COLBY: If it's something I could move, I would.

8 THE COURT: Okay.

9 UNIDENTIFIED SPEAKER: Thursday is off the table.

10 MR. COLBY: Yeah, Thursday I'm -- Thursday and Friday  
11 I'm --

12 THE COURT: Well, what's the date?

13 UNIDENTIFIED SPEAKER: Today's Monday.

14 MR. KODOSKY: Today's Monday.

15 THE COURT: So we have Tuesday and Wednesday are we  
16 talking about?

17 UNIDENTIFIED SPEAKER: Somebody's not available for  
18 most of Wednesday.

19 THE COURT: So no day this week?

20 UNIDENTIFIED SPEAKER: No, that's what I'm saying.  
21 This week is no good.

22 THE COURT: Okay. What about next week?

23 UNIDENTIFIED SPEAKER: You'd have to talk to Miss --  
24 to Eileen probably, because Mr. Caponi is not here either.  
25 Anyway --

1 THE COURT: Okay. And I don't have -- I made a  
2 effort not to bring my phone because I don't need to talk to  
3 Michael. I can talk to him on Teams.

4 UNIDENTIFIED SPEAKER: Uh-huh.

5 THE COURT: So -- and I can't figure out how to get  
6 into my -- because something's missing on here. I can't get  
7 into my calendar. I have no idea. I need to have somebody  
8 come, because Eileen used to set this up for me every morning  
9 and made --

10 UNIDENTIFIED SPEAKER: Yeah.

11 THE COURT: -- sure I was in the right domain.

12 UNIDENTIFIED SPEAKER: I mean, is it normally there  
13 if you're signed in properly?

14 THE COURT: Yeah, if I sign in properly -- hold on.  
15 Let me see if I can get out real quick and look. Hold on for a  
16 minute. So the next week is the week of the 22<sup>nd</sup>. Okay. The  
17 23<sup>rd</sup> I have nothing on my calendar. No trials on the 24<sup>th</sup>. The  
18 25<sup>th</sup> -- I don't have any trials on my calendar and Eileen is out  
19 that week.

20 UNIDENTIFIED SPEAKER: That's probably why.

21 THE COURT: That's why I don't have any trials.

22 UNIDENTIFIED SPEAKER: So that's next week?

23 THE COURT: We can function I think okay without  
24 Eileen. Barely, but we can make it.

25 Then that takes us to the week of the 29<sup>th</sup> where we

1 have a trial on the 3rd of November. I don't see anything,  
2 except the 1<sup>st</sup> is out. I have a longstanding appointment.

3 All right. So --

4 UNIDENTIFIED SPEAKER: So what do we have on the 23rd  
5 or the 27th? Do you have anything?

6 THE COURT: I see nothing on the 23rd and nothing on  
7 the 27th. Those two whole days are available. Unless we  
8 didn't put it in -- Eileen's been putting everything on my  
9 calendar, you know, Carol --

10 UNIDENTIFIED SPEAKER: Uh-huh.

11 THE COURT: Yes, counsel?

12 MR. KODOSKY: Your Honor, I hate to ask this, but I  
13 figured I'd ask because we've got a little bit of a situation.  
14 If we were going to try to get those two emails in as notice,  
15 and since they're addressed to Mr. Robertson, he's not back  
16 from Africa until November the 3rd.

17 So I don't know if you want me to recall him now for  
18 that brief issue, or we can also speak to Phillips and get  
19 notice since they -- we have a press release that went out that  
20 said that we -- not we, but they had, Alaya (phonetic), I think  
21 who they sold the patent portfolio to had a press release that  
22 went out. So obviously between that and the emails, we would  
23 be inquiring on notice under this license anyway. But I don't  
24 know what you prefer us to do.

25 THE COURT: Have Mr. Colby -- I mean, otherwise, he

1 says he's going to call him and --

2 MR. COLBY: Yeah. No, we would object to recalling  
3 Mr. Robertson. Debtors have had these documents since August,  
4 at least one of them since August. Mr. Robertson was here. He  
5 testified they didn't do it. That was their choice. So I  
6 think that ship has sailed, Your Honor.

7 This notice theory is something that could have been  
8 addressed.

9 THE COURT: Well, they can address it, but they may  
10 not be able to get Mr. Robertson to address it. They may do it  
11 by some other method, but not by Mr. Robertson because they've  
12 already called him. And typically, he's not a rebuttal  
13 witness, what is he? I mean, you can't call a witness. You  
14 don't get the evidence out and then say recall. That's not how  
15 that works.

16 And so, I'm going to have to agree, you cannot recall  
17 him, unless you're calling him to rebut something. He's not a  
18 recall witness. You get one bite at it in terms of your direct  
19 and then, ask him. I don't think we can do that. You can  
20 confer with Mr. Colby, but we're definitely not doing it right  
21 now.

22 And you can figure out and you can figure out how to  
23 get the announcements in. There's nothing stopping you from  
24 trying to do it that way. I just don't think you can do it  
25 because you already released Mister -- because I asked you, you



1 know, you're done. He was released as a witness. And the only  
2 way he can come back is as a rebuttal, and I'm not quite sure  
3 how that's going to work. But you can ask Mr. Anthony about  
4 it. I don't know.

5 Okay. So you guys figure that out.

6 We still need to come up with a date. So November  
7 3rd is not an issue. But I can tell you guys, just because we  
8 continue this hearing, presumably, you know, we're carrying  
9 this out, I -- we're going to be moving forward on the Motions.  
10 I'm not going to just stand still. And whether this would have  
11 an effect on it or not, I don't know.

12 MR. COLBY: Your Honor, we would also -- in light of  
13 what happened this past weekend, we would also request that at  
14 least the record of written submissions on this TRO Motion be  
15 closed and that we not be faced with another Saturday night  
16 special with a bunch of new briefs and new exhibits and, you  
17 know, new things like that.

18 I think in that case, we're up against, yet again,  
19 another sort of moving target and I think if that were to  
20 happen, we might be doing this, you know, in perpetuity. And  
21 we also -- I also have a question for the Court regarding  
22 whether -- I know that that new filing was not part of what the  
23 evidence was going to be today.

24 But if it's part of the written record on this  
25 Motion, the Supplemental submission that was made on late

1 Saturday night, early Sunday, you know, we haven't had an  
2 opportunity to respond to it. If it's excluded, it's not being  
3 considered, fine, we'll leave it alone.

4 THE COURT: Well, counsel, what I said was that I was  
5 not going to allow any evidence that was different from what  
6 was in the original Motion. To the extent that the  
7 Supplemental Motion talked about trade secrets, that was in the  
8 original Motion. To the extent that it had something to do  
9 with Mr. Stastney's employment contract, the liability.

10 MR. COLBY: Okay.

11 THE COURT: None of that.

12 MR. COLBY: Well then, Your Honor, I guess since this  
13 was a Supplemental brief without the Court's permission and  
14 outside of the Court's procedures and we haven't had an  
15 opportunity to respond to these new legal arguments apparently  
16 that are being made about trade secrets, because previously,  
17 the trade secrets were referenced in the initial Motion.

18 But again, we didn't know what we were responding to.  
19 It was very nonspecific. It was very vague. We would ask that  
20 we at least be allowed to respond to the portions of that  
21 Supplemental submission that addressed trade secrets, because  
22 it was not part of the Court's procedures. It was dropped on  
23 us at the last minute. We should have an opportunity to  
24 respond.

25 MR. ZAHRALDDIN: We have no objection to Mr. Colby

1 responding to those portions. I'm all for schedules, but when  
2 I try to talk to Mr. Colby and others, no one gives me a  
3 schedule. They file Motions. So more than happy to do that,  
4 Your Honor.

5 THE COURT: All right. I'm going to say this for the  
6 last time. Guys, I get that you're all invested in this, in  
7 terms of what you're doing. But it does not move the ball one  
8 bit by filing, not cooperating. I thought things were going a  
9 little smoother and that we were just kind of moving along. We  
10 had some different players who were running this.

11 We seem to be playing pretty well together and that  
12 we would be able to move, you know, pretty expeditiously  
13 through this without a lot of complications. So with that  
14 being said, to the extent you believe that there are some  
15 things in the Supplement that was not -- because putting aside  
16 the issue of whether the Supplement was even filed, you have  
17 said that they talked about trade secrets, but they weren't  
18 specific.

19 Had they not filed that and obviously, no discovery,  
20 because after the TRO, you just sort of respond to what you  
21 think it is, that's what would have happened. And you could  
22 have said, well, it was vague, so we really need a little more  
23 time to respond. That's how I'm treating that.

24 MR. COLBY: Right.

25 THE COURT: So that is a different issue. Anything

1 else, I don't -- I'm not addressing. You may want to -- I know  
2 there was a whole lot of new cases cited. You know, you may  
3 want to give me some legal -- but only to the extent I think I  
4 read -- and I'm not even going to, because I read so much, that  
5 it may just be cases relating to the standard, what it is,  
6 trade secrets, how you determine whether trade secrets are  
7 something that needs to be protected. You can respond to all  
8 of that, because I would have wanted that anyway. That is  
9 something new.

10 MR. COLBY: Appreciate that, Your Honor. That's all  
11 I'm asking.

12 THE COURT: Okay. How much time do you need for --  
13 because that will dictate when you're going to have a hearing?

14 MR. COLBY: Oh, I think if we can -- I think  
15 scheduling the hearing with all the various parties' schedules  
16 is the more difficult part. So we should do that and we'll --

17 THE COURT: You'll work from backwards --

18 MR. COLBY: I mean, we'll --

19 THE COURT: -- from there?

20 MR. COLBY: -- get it -- yeah, we'll get it done.

21 THE COURT: All right. So the week of the 23rd --  
22 hold on. Week of the 23rd. I -- again, have Monday and Friday  
23 and the afternoon of Tuesday, the afternoon of Wednesday. But  
24 that -- you know, I think we need more days. So we have the  
25 23rd and the 27th and then we have the 30th and we have a trial

1 in -- on the 1st -- on the 3rd. So right now, we're looking at  
2 23rd, 27th, 30. For entire days.

3 MR. COLBY: Yep. So speaking for most of the folks  
4 on this side of the room, but not Mr. Caponi. It looks like we  
5 could do the 23rd. We can't do the 27th. We could do the 30th.

6 THE COURT: Okay. So the 23rd or the 30th, correct?

7 MR. COLBY: Correct.

8 THE COURT: All right. Mr. Kodosky or Mr.  
9 Zahralddin, what are we talking about from your side?

10 MR. ZAHRALDDIN: I'm not that important, Your Honor.  
11 But Mr. Kodosky says he clear, so -- and I'll move things  
12 around if I need to.

13 THE COURT: Okay. The 23rd or the 30th are the two  
14 days. Subject to confirmation with Mr. Caponi, correct?

15 MR. COLBY: I'd hate to think we leave him out so --

16 THE COURT: I'm not even going to comment on that.

17 Mr. Alexander isn't here and Mr. Caponi, the two of  
18 them, you know, I think they have one of those sports  
19 relationships, where we're on the court, we're on the field is  
20 all out war.

21 MR. COLBY: They're, like, brothers, Your Honor.  
22 They just --

23 THE COURT: It's all-out war --

24 MR. COLBY: -- you know, they fight like brothers.

25 THE COURT: -- while we're on the field or in the

1 Court or on the big -- wherever you are. And then, afterwards,  
2 we're all, let's go get a drink together. I see -- that's a --  
3 never mind. But in any event, that's where we are. I will  
4 hold the 23rd and the 30th open until you call and confirm  
5 which one of those work.

6 MR. KODOSKY: Okay. I will speak with Mr. Colby and  
7 include other folks on email and hopefully we'll get  
8 something --

9 THE COURT: All right.

10 MR. KODOSKY: -- done.

11 THE COURT: All right. That concludes the matters  
12 that are scheduled before the Court today.

13 The Court is adjourned until tomorrow at 10:30.

14 UNIDENTIFIED SPEAKER: Uh-huh.

15 THE COURT: 10:30. Thank you, counsel. And hopefully  
16 that you will be able to get out the courtroom and whatever was  
17 going on is over. If not, there are lots of restaurants on  
18 Locus Street. There's hotels, restaurants, Chinatown, if you  
19 want to go get food so you can get out, okay? Thank you.

20 MR. COLBY: Thank you, Your Honor.

21 MR. KODOSKY: Thank you, Your Honor.

22 MR. ZAHRALDDIN: Thank you, Your Honor.

23 THE COURT: All right.

24 (Proceedings adjourned)

25

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

*John Buckley*

John Buckley, CET-623  
Digital Court Proofreader